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STATE OF CALIFORNIA
COASTAL COMMISSION

ORIGINAL
Volume 1 of 2
Pages 1 - 203

TRANSPORTATION CORRIDOR)	
AGENCIES (TCA);)	
SOUTHERN ORANGE COUNTY &)	Consistency Certification
NORTHERN SAN DIEGO COUNTY)	No. 018-07

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Wednesday
February 6, 2008
Agenda Item No. 8.b.

Del Mar Fairgrounds
Wyland Hall
2260 Jimmy Durante Boulevard
Del Mar, California

1
2 A P P E A R A N C E S
3

4 COMMISSIONERS

5 Patrick Krueer, Chair
6 Bonnie Neely, Vice Chair
7 Khatchik Achadjian
8 Steve Blank
9 William A. Burke
10 Larry Clark
11 Steven Kram
12 Mike Reilly
13 Mary Shallenberger
14 Sara Wan

15 Will Kempton, Business, Transportation, &
16 Housing Agency
17 Michael Chrisman, Resources Agency
18

19
20 STAFF
21

22 Peter Douglas, Executive Director
23 Hope Schmeltzer, Staff Counsel
24 Mark Delaplaine, Federal Consistency Manager
25 Dr. Jonna Engel, Staff Environmental Scientist
Sarah Townsend, Coastal Staff Analyst
Dr. Jack Gregg, Environmental Specialist
Cassidy Teufel, Coastal Staff Analyst

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1 California Coastal Commission
2 January 6, 2008
3 Transportation Corridor Agencies (TCA)
4 Foothill Transportation South Toll Road
5 Consistency Certification No. CC-018-07

6 * * * * *

7 9:50 a.m.

8 CHAIR KRUER: ...I would like to first go to our
9 counsel, Ms. Schmeltzer, to report on our executive session.

10 CHIEF COUNSEL SCHMELTZER: Thank you, Mr. Chair.

11 Can people hear us?

12 [Audience Response]

13 In closed session we discussed matters relating to
14 potential litigation concerning the toll road. In addition,
15 we discussed a letter received from the Attorney General's
16 Office, that I will read into the record now.

17 "Dear Chairman Kruer and Commissioners, I am
18 writing to inform the Commission of our
19 determination that the Attorney General's
20 Office should not participate in your
21 hearing on the Foothill Transportation
22 South Toll Road, scheduled for Wednesday,
23 February 6, 2008 at the Del Mar Fairgrounds.
24 We arrived at this decision because the
25 Attorney General, in both its independent

1 capacity, and on behalf of the California
2 Park and Recreation Commission, has filed
3 suit alleging that the Foothill Eastern
4 Transportation Corridor Agency violated
5 the *California Environmental Quality Act* (CEQA)
6 when it approved this project, *The People of*
7 *the State of California, et al v. Foothill*
8 *Eastern Transportation Corridor Agency, et al.*
9 "He has also filed a related suit on behalf
10 of the Native American Heritage Commission
11 quoting violations of the Public Resources Code,
12 *Native American Heritage Commission v. Foothill*
13 *Eastern Transportation Corridor Agency, et al,*
14 and is intent on vigorously pursuing both actions.
15 "Given the Attorney General's involvement in this
16 litigation, challenging the approval of the toll
17 road, we have concluded that the appearance of
18 conflict or bias might arise" --

19 [Audience Reaction]

20 CHAIR KRUEER: Please, again, you need to be quiet.
21 I really beg you to please -- we'll, turn up the sound,
22 please.

23 CHIEF COUNSEL SCHMELTZER: -- "the appearance of
24 conflict or bias might arise if our office
25 also attempted to render legal advice to the

1 Commission on this project.

2 "To avoid even the semblance of bias or
3 unfairness we have decided we should not
4 participate as counselors to either your
5 staff or the Commission in these proceedings.
6 The determination only goes to our involvement
7 in the proceedings before the Commission.

8 "If the Commission requests other legal
9 services related to this project in the
10 future, we would have to consider whether
11 we could provide the Commission with such
12 representation after reviewing our ethical
13 obligations and the circumstances in existence
14 at that time.

15 "It is never easy to tell a client agency
16 that we cannot provide required legal
17 assistance. Our decision is made easier
18 in this case, however, by our awareness
19 that the Commission is served by an
20 outstanding legal staff capable of providing
21 Commissioners with excellent advice on the
22 requirements of the law.

23 "Thank you for your consideration,
24 Sincerely, Matthew Rodriguez,
25 Senior Assistant Attorney General, for

1 Edmund G. Brown, Jr. Attorney General."

2 CHAIR KRUEER: Thank you, Ms. Schmeltzer.

3 [Regular Agenda Items take up & a Recess held]

4 CHAIR KRUEER: Okay, we can go ahead and do that.

5 What I would like to do -- would everybody be
6 quiet, please, as I would like to go over the hearing
7 procedures and announce the order of speakers, and how we are
8 going to do it that was posted on the web. I am sure most of
9 you have seen it. We will start out with the staff
10 presentation, and then the applicant, the TCA, will go next
11 and they will have 60 minutes, total, then the organized
12 opposition will have 60 minutes, total. Then we will go to
13 elected officials and public agency representatives, 3
14 minutes each, then we will go to individual members of the
15 public, 2 minutes each.

16 And, we are going to mix them all up, because if
17 we took every speaker slip we could be here -- we would all
18 have to camp out until tomorrow --

19 [Audience Response]

20 Again, no ceding of time from one speaker to
21 another, and no speaker slips will be accepted after the
22 staff presentation is completed.

23 And, again, I beg you, please, no audible
24 outbursts will be allowed. You may wave your hands to show
25 your support, or give the thumbs down to signal your

1 opposition.

2 And, at a certain time this evening, to preserve
3 adequate time for the Commission's deliberations, I, the
4 Chair, reserve the right to close the public hearing after
5 comprehensive testimony.

6 So, with that -- also I would like to report that
7 during the break, I checked my messages, and I had a phone
8 message from Commissioner Lorena Gonzalez, who is the
9 alternate for Commissioner Hueso. In case you didn't know --
10 she wanted me to know -- Commissioner Hueso has been very
11 sick, been in and out of the hospital 2 or 3 times the last
12 few days, and does not plan on -- he is still sick -- being
13 here today, and his alternate Lorena Gonzalez, Commissioner
14 Gonzalez, was on her way over here today, and after talking
15 to staff and staff counsel, according to her message she left
16 with me, she is afraid of potential conflict, and doesn't
17 want that potential liability, because she represents the
18 union, so she is, basically, conflicted herself out. So, she
19 won't be sitting in for Commissioner Hueso, so I just wanted
20 to --

21 **COMMISSIONER BLANK:** Mr. Chairman.

22 **CHAIR KRUEER:** Yes, Commissioner Blank.

23 **COMMISSIONER BLANK:** Can the staff, as much as
24 they can, maybe explain to the Commission and the audience
25 the reasons for recusal? I know we discussed this issue, but

1 if there is anything else that could be said? and if not just
2 tell us there is nothing else that can be said?

3 CHAIR KRUEER: Ms. Schmeltzer, do you want to add
4 something?

5 CHIEF COUNSEL SCHMELTZER: The alternate
6 Commissioner requested legal advice about potential conflicts
7 of interest under state law, and after discussion with her,
8 we came to the conclusion that there was a conflict of
9 interest, and the potential for bias that could jeopardize
10 this Commission's decision, and based on that, the alternate
11 Commissioner is not participating.

12 COMMISSIONER BLANK: And, that was her conclusion?
13 or staff? or both?

14 CHIEF COUNSEL SCHMELTZER: That was both. That
15 was my conclusion as the chief counsel, and she accepted that
16 conclusion.

17 COMMISSIONER BLANK: And, was that the Chairman's
18 conclusion, as well?

19 CHAIR KRUEER: Well, all I can tell you,
20 Commissioner Blank, is the message that I had, and what Ms.
21 Schmeltzer just reported to us just now, and it sounded to me
22 in the message she left for me earlier, that she felt, quote,
23 that she couldn't accept that type of potential liability and
24 felt that she had a conflict.

25 COMMISSIONER BLANK: Thank you, Mr. Chairman.

1 **CHAIR KRUEER:** Okay.

2 **CHIEF COUNSEL SCHMELTZER:** Mr. Chair, I just
3 wanted to clarify and add that in determining this we spoke
4 to the FPPC, and that was their conclusion, as well.

5 **EXECUTIVE DIRECTOR DOUGLAS:** The FPPC is the Fair
6 Political Practices Act.

7 **CHIEF COUNSEL SCHMELTZER:** Fair Political Practice
8 Commission.

9 **CHAIR KRUEER:** Thank you, Mr. Douglas.

10 **EXECUTIVE DIRECTOR DOUGLAS:** For the benefit of
11 those in the audience.

12 **CHAIR KRUEER:** Yes, thank you.

13 Okay, and with that, I think we have covered --
14 before we get going, Director Douglas, is there anything else
15 the staff would like to say before we get going on the rules
16 for today? or procedures?

17 **EXECUTIVE DIRECTOR DOUGLAS:** No, we are prepared
18 to proceed with the staff report.

19 **CHAIR KRUEER:** Okay, let's proceed with the staff
20 presentation, thank you.

21 **EXECUTIVE DIRECTOR DOUGLAS:** That will be
22 presented by Mr. Mark Delaplaine.

23 Mark.

24 **FEDERAL CONSISTENCY MANAGER DELAPLAINE:** Thank
25 you, Chairman, Commissioners, the item in front of you is a

1 Consistency Certification from the Transportation Corridor
2 Agency of Orange County -- what we call TCA to get through
3 this hearing more quickly -- for the Foothill South Toll
4 Road, which is a 16-mile long initially at 4 lanes,
5 ultimately contemplated to be 6 lanes, but what is in front
6 of you is 4 lanes, a highway from Oso Parkway in southern
7 Orange County to I-5 at the northern end of Camp Pendleton.

8 As you can tell from the number of people here
9 today, there has been an enormous amount of input from the
10 public. We received incredible volumes of material, 1000s of
11 letters, close to 10,000 post cards, close to 20,000 emails,
12 a large number of youtube communications, and probably some
13 things we haven't even figured out yet, but obviously, there
14 is tremendous interest in this item.

15 The staff recommendation is that the Commission
16 object to the certification. The certification has been
17 submitted under the federal *Coastal Zone Management Act* for a
18 federally permitted activity partially within and partially
19 outside of the coastal zone.

20 Under the *Coastal Zone Management Act*, the
21 Commission has jurisdiction over all aspects of the projects
22 that affect the coastal zone, regardless of their location --
23 as the Commission will recall from the Navy's sonar case that
24 we just recently discussed, their BHP LNG terminal that the
25 Commission recently reviewed.

1 Typical spill-over effects that the Commission
2 reviews, are say in the marine environment where marine
3 mammals swim in and out of the coastal zone. On land,
4 physical spill-over effects are downstream effects from
5 upstream activities.

6 We have a slide, not all that visible, but
7 essentially, there is, approximately, two halves of the toll
8 road, and it is the southern half that is the focus of our
9 concern about effects on the coastal zone. The part in the
10 San Mateo Creek, and specifically Cristianitos creek's
11 watershed. We haven't really focused much of our attention
12 on the activities in the upland half that are in the San Juan
13 Creek watershed. That is a more urbanized area, and we don't
14 believe it raises the same level of concern over coastal zone
15 resources.

16 A couple of procedural points that I want to
17 cover: the Commission does need to act today, or at least
18 this week, because of the statutory time period for
19 Consistency Certifications, and because TCA has extended the
20 review only through February.

21 The standard of review before the Commission is
22 Chapter 3 of the Coastal Act. If the Commission objects to
23 the certification -- as we are recommending -- TCA has the
24 ability to appeal that objection to the Secretary of
25 Commerce. If the Commission concurs, there is no appeal

1 process.

2 The Commission also has the option, if it wishes
3 to conditionally concur, which could mean one of two things:
4 if TCA were to agree to the conditions, then that decision is
5 treated as a concurrence, but if TCA were not to agree to the
6 conditions, then that is treated as an objection. We
7 generally prefer that if the Commission seeks modifications
8 to a project that they be incorporated as project
9 modifications, but you do have the authority, if you wish, to
10 adopt conditions.

11 A final procedural point, a Consistency
12 Certification is not the equivalent of a Coastal Development
13 Permit under state law. It is our position TCA needs to
14 submit a permit application before they could proceed with
15 this project, regardless of the Commission's action today, as
16 they did for the previous toll road that the Commission
17 reviewed, San Joaquin Hills. We encourage TCA to submit the
18 permit application along with the certification, and they
19 chose not to do that.

20 So, back to the merits of the project. It is our
21 position -- and we will go through these issues one by one,
22 that the project is inconsistent with a large number of
23 Coastal Act policies, environmentally sensitive habitat,
24 wetlands, public access and recreation, surfing, archaeology,
25 and green house gas contributions to global warming.

1 We are convinced, and we believe that you will be
2 convinced at least by the end of this hearing, that at a
3 minimum the project is inconsistent with Chapter 3 of the
4 Coastal Act. It is our position that at that point, the
5 analysis should end, and that should result in a Commission
6 objection.

7 TCA has asked you to consider applying Section
8 30007.5 the conflict resolution policy. This policy has,
9 essentially, two tests. In order to apply it, you first need
10 to find that there is, indeed, a conflict with two or more
11 policies of the Coastal Act. If you do find that there is a
12 conflict, then you need to subsequently determine whether
13 that conflict has been resolved in a manner that is most
14 protective of significant coastal resources.

15 I will conclude with further remarks about the
16 application of that test, after we go through the individual
17 Chapter 3 policies.

18 But, now, I would like to turn to alternatives.
19 The alternatives analysis is important for a number of policy
20 calls, and particularly a wetlands test requiring the least
21 environmentally damaging feasible alternative, and also other
22 policies requiring avoidance and minimization measures.

23 Essentially, there have been a large, large number
24 of alternatives considered over the last 15 years, or so.
25 There is a number of alternatives in the San Mateo Creek

1 watershed which we consider to be, essentially, the same
2 alternatives, in terms of effects on the coastal zone. So,
3 we consider those, essentially, one alternative.

4 There is the I-5 widening alternative, which you
5 will hear about today, which would be widening the existing
6 I-5. A central corridor alternative, which would be a
7 different toll road through Clemente, and not through the San
8 Mateo Creek watershed. And, then, there are various sort of
9 alternatives on arterial improvements, and variations on
10 Avenida La Pata that are discussed in the staff report.

11 It is our position that the proposed alternative
12 is the most environmentally damaging of all of these
13 alternatives. We believe that this is because of the
14 project's greater fragmentation effects, the greater
15 sensitivity and higher quality of the resources affected, and
16 the extreme difficulty for a number of the issues in actually
17 mitigating impacts.

18 So, we believe that the I-5 alternative is
19 probably the environmentally and socially the least damaging
20 alternative, and the one that ought to be seriously
21 considered. We also note that the opponents to the project
22 have put together a report that alleges that there are far
23 less socially disruptive impacts, that this alternative could
24 be designed with a smaller footprint, and we believe they
25 have made a credible case.

1 And, we would like to note for the record that the
2 Environmental Protection Agency has taken a look at this
3 report, and has indicated to the Federal Highway Administra-
4 tion that they believe that this information is sufficiently
5 compelling to warrant the need for collaborative -- to get
6 together and consider whether, indeed, they might want to
7 alter their previous conclusions about what they are
8 preliminarily determining to be the least environmentally
9 damaging alternative, and we passed out that letter in your
10 packets.

11 From our position, we are saying that any of the
12 alternatives outside of the San Mateo Creek watershed should
13 be seriously considered, and would be less damaging. We
14 don't believe that the I-5 is the only alternative, but we do
15 believe that the proposed alternative is the most environ-
16 mentally damaging.

17 Now, I am going to turn it over to Dr. Engel to
18 discuss environmentally sensitive habitat issues.

19 Thank you.

20 **CHAIR KRUEER:** Okay.

21 [Pause in proceedings.]

22 **EXECUTIVE DIRECTOR DOUGLAS:** We are waiting for
23 the slides to come up.

24 **STAFF ENVIRONMENTAL SCIENTIST ENGEL:** Thank you.

25 The proposed toll road project involves develop-

1 ment within environmentally sensitive habitat areas that
2 support the Pacific pocket mouse, the arroyo toad, the least
3 Bell's vireo, the southern steelhead, the tidewater goby, and
4 the California coastal gnatcatcher. Each of these species is
5 listed as federally threatened or endangered. Federally
6 endangered species are taxa in danger of becoming extinct
7 throughout all, or a significant portion of their range.

8 Federally threatened species are taxa, which are
9 likely to become endangered in the foreseeable future, in the
10 absent of special protection. In almost every case, the
11 primary reason for the threatened or endangered status of
12 each of these species is habitat loss, or destruction due to
13 coastal development.

14 In addition to the direct impact to rare species
15 and their habitats, the proposed toll road would also
16 fragment and transform the most unaltered major coastal
17 canyon ecosystem in Southern California.

18 This map shows the proposed toll road alignment.
19 The area that TCA estimated to be directly impacted is in
20 red. Areas that have been designated critical habitat are
21 shown for the tidewater goby in yellow, for the arroyo toad
22 in green, and for the Coastal California gnatcatcher in blue.

23 Now, this slide shows the proposed toll road
24 coastal zone impact area. That is within the estimated area
25 that TCA has determined to be the disturbance zone, and that

1 is upon the respective threatened and endangered species.
2 Those occupied and nearby suitable habitat of these
3 threatened and endangered species meet the definition of ESHA
4 regardless of whether it has been demonstrated that the
5 suitable habitat is currently occupied. Placement of rows
6 within natural landscape can cause direct loss of habitat and
7 individuals, alter quality of adjacent habitat, disrupt
8 hydrologic regimes, cause road kills, and fragment habitat.

9 This, in turn, can result in decline of certain
10 species populations, particularly smaller populations that
11 are more susceptible to genetic isolation, and local
12 extinction, a loss in species diversity near roadways, and
13 barriers to animal movement. The direct effect associated
14 with new roadway construction are the permanent loss of
15 habitat and direct mortality of individuals.

16 Temporary impacts to habitat are also likely to
17 occur during actual construction in conjunction with such
18 activities as land contouring, construction staging, and
19 vehicle access. Increased noise and dust generation, and the
20 possible introduction of night lighting if construction is
21 not limited to the dawn to dusk hours of daylight.

22 The effects of roads on the physical environment
23 include noise, lights, dust, and other particulates, metals
24 such as lead, cadmium, nickel, and zinc, and gasses such as
25 carbon monoxide and nitrogen oxygen complexes. Heavy metals

1 are known to accumulate in the tissues of plants and animals
2 up to 656-feet away from roads. Noise and artifical lighting
3 have been shown to effect some wildlife species, given that
4 many species rely on sight or sound to communicate, locate,
5 and attract mates, navigate, avoid danger, and find food.

6 Car traffic has been correlated with the reduction
7 in the density of breeding bird populations adjacent to
8 roads. The most prominent impact of roads is habitat
9 fragmentation, which can result in a variety of negative
10 effects to populations. In Southern California, the effects
11 of fragmentation have been shown to decrease the number of
12 resident bird species, decrease the diversity of small
13 rodents, and decrease the diversity and cover of native plant
14 species. Smaller populations are more susceptible to
15 extirpation due to random fluctions in population dynamics,
16 or catastrophic events.

17 The most significant adverse impacts from the toll
18 road would be to the Pacific pocket mouse, which is severely
19 endangered with only 4 total remaining populations in an
20 estimated 150 total individuals. The siting of the proposed
21 toll road bisects 2 of the 4 remaining populations: the San
22 Mateo north, and the San Mateo south populations. The San
23 Mateo north population is directly adjacent to the proposed
24 toll road location, and mice have been documented to occur
25 within the estimated toll road disturbance area.

1 Approximately, 12 acres of Pacific pocket mouse
2 ESHA occurs in the coastal zone portion of the toll road
3 impact area. The U.S. Fish and Wildlife Service have
4 identified the San Mateo north population as the population
5 with the most potential for recovery. San Mateo south, and
6 oscar one are in areas regularly used for military training
7 exercises and the Dana Point population is on privately owned
8 land.

9 Construction of the toll road would likely result
10 in the loss of the San Mateo north population, which would
11 significantly increase the risk of extinction for this
12 species. As the U.S. Fish and Wildlife Services noted in its
13 September 30, 2005 letter to the federal Highway Adminis-
14 tration, regarding the Pacific pocket mouse, the San Mateo
15 north population is necessary for the survival and recovery
16 of the Pacific pocket mouse, because it one of only four
17 populations known for the species.

18 Based on analysis, the Fish and Wildlife Service
19 has determined that the proposed action, as described in the
20 biological assessment, likely would increase mortality
21 factors at the San Mateo north site during construction and
22 in association with the direct and indirect effects of the
23 toll road operations.

24 The recovery plan for the Pacific pocket mouse,
25 produced by the Fish and Wildlife Service in 1998, details

1 the vital nature of the existing population locations. The
2 immediate recovery goal is to reverse the extinction of the
3 Pacific pocket mouse by focusing on short term strategies to
4 improve the subspecies' prospects for survival. Foremost
5 among these are the immediate protection and restoration of
6 existing populations and the habitat of the subspecies.

7 Considering the extremely small population of the
8 Pacific pocket mouse, and the fragmentation and depletion of
9 the coastal strand river alluvium and coastal sage scrub
10 habitats upon which the subspecies depend, further losses of
11 occupied or potential habitat would seriously reduce the
12 probability of the persistence of the subspecies. Given the
13 small sizes of the populations, that three known extent
14 locals, the apparent sedentary nature of the subspecies, and
15 the severe fragmentation and diminution the subspecies
16 habitat, and Pacific pocket mouse is highly susceptible to
17 distinction as the result of environmental or demographic
18 factors, alone.

19 Consultants for TCA have developed a Pacific
20 pocket mouse resource management plan for the San Mateo north
21 population. They created a habitat model that suggests that
22 there is only 0.6 acre of high quality Pacific pocket mouse
23 habitat within the San Mateo north population area. However,
24 their own exhibit, which depicts former agricultural areas,
25 vegetation soil and float characteristics suggests otherwise.

1
2 For instance, they insist that the pocket mouse is
3 absent from former agricultural areas, their Exhibit 1 shows
4 that 30 percent of the trapped mice in the San Mateo north
5 population were caught in or immediately adjacent to former
6 agricultural areas. Also, they found that soils in the vast
7 majority of the management plan area, including all of the
8 coastal zone, consisted of less than 10 percent clay, as
9 shown in their Exhibit 2. All of trapped mice have been
10 collected in sandy soils with zero to 10 percent clay.

11 With regard to vegetation, Pacific pocket mice are
12 known to inhabit coastal sage scrub, grassland, and ruderal
13 habitat. The Management plan shows the management area
14 consisting of two types of sage scrub, both of which are
15 plant community types capable of supporting Pacific pocket
16 mice.

17 Much of the potential for Pacific pocket mouse
18 habitat is in the vicinity of the toll road. In the vicinity
19 of the toll road it occurs on relatively steep slopes, and
20 TCA's consultant asserts that the pocket mice are not find on
21 steep slopes; however, the data shown in Exhibit 5 of the
22 management plan shows that the Pacific pocket mice have been
23 captured in areas with slopes greater than 18 percent, and
24 greater than 30 percent.

25 Wayne Spencer, a Pacific pocket mouse expert, who

1 has extensive trapping experience on Camp Pendleton, has
2 pointed out that 10 percent of the San Mateo north captures
3 were on slopes greater than 30 percent. To put this in
4 perspective, less than 10 percent of the trapping effort has
5 been on such steep slopes. These data falsify the hypothesis
6 that Pacific pocket mice avoid steep slopes. Both flat and
7 sloped areas with suitable soil and vegetation character-
8 istics are potential Pacific pocket mouse habitat. Such
9 areas comprise far more than the 0.6 acres identified in the
10 management plan.

11 Finally, the Exhibit 6 shown here depicts two of
12 the Pacific pocket mouse mitigation measures proposed in the
13 research management plan. An 18-inch barrier is proposed
14 along the west side of the toll road, which is intended to
15 divert mice to culvert underscrossings; however, none of the
16 proposed culverts are close to actual capture locations. In
17 fact, the culverts are sited about as far away as possible
18 from capture locations. One is in the extreme south of the
19 Pacific pocket mouse management area, and 3 others are in the
20 extreme north, or outside of the management area.

21 The southern most culvert leads to a patch of
22 vegetation that will be completed isolated between I-5,
23 Cristianitos Road and the proposed toll road. The first
24 northward culvert leads directly into the existing camp
25 grounds. The next two lead directly into an isolated patch

1 of vegetation outside of the management area that hasn't been
2 mapped for soils or vegetation, is surrounded by a road, and
3 adjacent to a polluted water catchment area.

4 TCA's pocket mouse resource management plan
5 includes numerous other mitigation measures that have never
6 been field tested to demonstrate their efficacy for Pacific
7 pocket mice. Examples include soil augmentation, reduction
8 of an assumed competition between pocket mice and other
9 rodent species, control of invasive ants, and invasive plant
10 removal. The truth is the resource management plan is
11 largely experimental with no guarantee for success.

12 Critical to the biology of the pocket mouse is the
13 ability to expand its members in good years, as this is vital
14 to insuring their survival in bad years. If the toll road
15 would trap the San Mateo North population in a highly
16 constrained area, between urban San Clemente and the highway,
17 it would physically eliminate some currently occupied habitat
18 as well as a large amount of suitable habitat needed for
19 population expansion, both termed essential by the U.S. Fish
20 and Wildlife Service recovery plan.

21 In addition to direct taking, virtually all of the
22 rest of the expansion habitat would be degraded by fragment-
23 ation, loss of connectivity, and edge effects, such as noise
24 and light pollution. A significant portion of this essential
25 expansion habitat, which is ESHA, lies within the coastal

1 zone.

2 The proposed toll road project would likely result
3 in the loss of one of the only remaining coastal populations
4 of the arroyo toad, because it proposes 3 to 4 years of
5 significant construction activities within more than 39.3
6 acres of ESHA for this species. The April 2005 final
7 designation of critical habitat for the arroyo toad refers to
8 San Mateo Creek and San Onofre Creek basins as Unit 11, and
9 states that Unit 11 contains an indispensable arroyo toad
10 population in the San Mateo Creek and San Onofre Creek
11 basins. Unit 11 contains several primary constituent
12 elements of low gradient stream segments with sandy, or fine
13 gravel substrate, shallow pools for breeding and rearing of
14 tadpoles and juveniles, and riparian and adjacent upland
15 habitat for foraging and dispersal to other populations.

16 With so many favorable habitat conditions, this
17 area is able to support a considerable arroyo toad
18 population, and is essential for the species.

19 Furthermore, the March 2007 Marine Camp Pendleton
20 Integrated Natural Resources Management Plan documented that
21 over 90 percent of the ponded potential breeding habitat in
22 the San Mateo and San Onofre Creeks was occupied by the
23 arroyo toad. The plan states that it is likely that some of
24 the largest remaining populations of arroyo toad occurs on
25 Camp Pendleton.

1 Additionally, the lower portions of the San Mateo
2 Creek basin, the San Onofre Creek, and the Santa Margareta,
3 all of which are located on Camp Pendleton, may be the only
4 remaining coastal plain lands in Southern California on which
5 the arroyo toad occurs within 6 miles of the coast line, and
6 down to the coastal marsh zone. As such, they may harbor
7 populations with xenotypic characteristics that are now
8 limited in representation throughout the range of the arroyo
9 toad in California.

10 Robert Lovich, a recognized expert on the arroyo
11 toad, and with nearly a decade of direct experience with the
12 management research and conservation of the species observed
13 that, potentially, irreversible fragmentation of the arroyo
14 toad population within and without the coastal zone would
15 result from the construction of the proposed toll road.

16 The toll road footprint represents the last
17 wildlife corridor that extends from the Pacific Ocean inland
18 to the Santa Ana Mountains. Areas to the north and south
19 have already been compromised by development, and the arroyo
20 toad vanished from these areas long ago.

21 The toll road in this location would degrade and
22 fragment this extraordinary relic of a once larger functional
23 ecosystem in Southern California.

24 The gnatcatcher is a non-migratory species that
25 was considered locally common in the mid-40s. By the 60s the

1 gnatcatcher had experienced a serious decline in numbers and
2 was listed as threatened in 1993. Biological surveys
3 conducted by TCA in '95 and 2001 recorded the presence of
4 gnatcatchers within designated gnatcatcher critical habitat
5 areas within the project area.

6 Because the area included within these surveys was
7 both within and outside of the coastal zone portion of the
8 project area, TCA compiled a refined document titled "Focus
9 Summary of Environmental Impacts Within the Coastal Zone" to
10 differentiate these areas. The focus summary concludes that
11 the proposed project will impact, approximately, 49.75 acres
12 of coastal sage scrub habitat and 3 coastal gnatcatcher
13 breeding territories within the project's disturbance limit
14 within the coastal zone.

15 In addition, more recent surveys conducted as a
16 part of the Camp Pendleton Integrated Natural Resources
17 Management Plan indicates that the continued presence of
18 gnatcatchers in and around both San Mateo Creek and San
19 Onofre Creek, that they are there within the toll road
20 corridor.

21 Coastal sage scrub habitat preferred by gnat-
22 catchers has declined, approximately, 90 percent from
23 historic levels. The 32.36 acres of coastal sage scrub in
24 the project area is occupied by gnatcatchers, and meets the
25 definition of ESHA under the *Coastal Act*, due to its

1 important ecosystem function of supporting a rare and
2 threatened species.

3 The least Bell's vireo is a small migratory song
4 bird that feeds, primarily, on insects and inhabits dense
5 willow dominated riparian habitat. As much as 50 percent of
6 feeding occurs in upland coastal sage scrub and chaparral
7 adjacent to riparian habitat. The primary cause of vireo
8 population decline is loss of habitat due to urbanization,
9 agriculture, water control practices, spread of invasive
10 plants, and reduced nesting success due to the brown-headed
11 cowbird nests parasitism.

12 At the time of listing the U.S. population had
13 plumeted to only 291 known active vireo territories, and the
14 historic distribution had been restricted to less than 5
15 percent of its former range, with greater than 99 percent of
16 remaining territories concentrated in Southern California,
17 and 77 percent of those within San Diego County, alone.

18 As stated by TCA in the document titled "Focus
19 Summary of Environmental Impacts in the Coastal Zone"
20 territorial least Bell's vireos were observed at 16 locations
21 in the study area during the 1995 surveys. All but one of
22 these observations occurred along San Mateo Creek. During
23 2001 surveys, a minimum of at least 27 least Bell's vireos
24 use areas were recorded in the study area.

25 In addition, more recent surveys conducted as part

1 of the Camp Pendleton Management Plan indicated as many as 68
2 vireos at various locations along San Mateo Creek, and 56
3 vireos along San Onofre Creek. A total of 5.2 acres of least
4 Bell's vireo ESHA is within the toll road impact area in the
5 coastal zone.

6 The U.S. Fish and Wildlife Service has stated that
7 the tidewater gobies are threatened with extinction in Orange
8 and San Diego Counties, where essential habitat has been
9 identified. The primary threat to survival to the tidewater
10 goby includes sedimentation, stream alteration, and
11 vehicle-related pollution. Surveys conducted by TCA and
12 referenced in the document titled "Focus Summary of Environ-
13 mental Impacts in the Coastal Zone" document the continued
14 presence of the tidewater goby within the coastal zone
15 portion of its critical habitat area.

16 TCA states that populations of the tidewater goby
17 in San Diego County exists in the San Mateo and San Onofre
18 lagoons. A large population of tidewater gobies, 137, was
19 observed in San Mateo lagoon and one individual was caught in
20 San Mateo Creek during the 1995 survey. A total of 17.49
21 acres of tidewater goby ESHA is within the toll road impact
22 area in the coastal zone.

23 Finally, the southern steelhead population is
24 currently listed as endangered, due to a decline from an
25 historic population of over 55,000 individuals to the current

1 population of, approximately, 500 individuals. At the time
2 of listing, southern steelhead had been thought to be
3 extirpated from all of its historic ranges in Southern
4 California south of Malibu Creek.

5 In 1999, however, juvenile southern steelhead were
6 observed in San Mateo Creek, which prompted the National
7 Marine Fisheries Service to extend the southern most border
8 of the southern steelhead range from its previous location at
9 Malibu Creek to the California Mexican border. This range
10 extension was finalized in 2002. As noted in the range
11 extension, the National Marine Fisheries Service states,
12 since the range extension was proposed in December 2000,
13 National Marine Fisheries Service has obtained some
14 additional new information on steelhead in San Mateo Creek.
15 According to Neilson and Sage, the San Mateo Creek steelhead
16 have a habitat that has not been found in their previous
17 survey of hatchery steelhead strains in California, which
18 suggests an endemic population structure in San Mateo Creek.

19 Overall, as the National Marine Fisheries Service
20 notes in a 2004 letter to TCA, given the low numbers of
21 steelhead in Southern California, and the small number of
22 Orange County streams open to the ocean which contain
23 steelhead, San Mateo Creek may be essential to the survival
24 and recovery of steelhead in the southern portion of the
25 Southern California Range.

1 The San Mateo Creek and lagoon is southern
2 steelhead ESHA, because it represents not only the southern
3 most occupied creek system for the southern steelhead, but
4 also the southern most occupied creek systems for the entire
5 steelhead species. By providing habitat for steelhead, that
6 exists at the southern edge of the species' range, San Mateo
7 Creek may provide an important refuge for members of this
8 species that are adapted to warmer oceanic and riverine water
9 temperatures.

10 Considering the potential for climate change
11 related to sea surface temperature rise, and northward
12 shifting of marine habitat zones, preservation of southern
13 steelhead populations that may demonstrate specific
14 adaptations and genetic traits that enabled them to exist in
15 the warmest portions of occupied habitat may be necessary for
16 continued existence of the species as a whole.

17 Fifty acres of coastal zone ESHA that supports
18 five federally endangered and one federally threatened
19 species, will be severely impacted, if not completely
20 destroyed by the proposed toll road. The proposed toll road
21 is sited within one of the most pristine and the only
22 undammed major coastal watershed in California south of
23 Ventura. This watershed supports numerous threatened and
24 endangered species, including 6 in the coastal zone region,
25 alone.

1 According to an analysis of watersheds between Los
2 Angeles and the Mexican border, conducted by the Conservation
3 Biology Institute, the San Mateo Creek and the San Onofre
4 Creek watersheds have the highest ecological integrity of any
5 coastal watershed. Nearly one-third of the 138-acre project
6 footprint within the coastal zone has been found to meet the
7 Coastal Act definition of ESHA.

8 And, now, Ms. Townsend will present.

9 **CHAIR KRUEER:** Ms. Townsend, go ahead.

10 **COASTAL STAFF ANALYST TOWNSEND:** Thank you, and I
11 am going to begin with wetlands.

12 The proposed toll road would include installation
13 of new bridge supports in San Mateo creek, new bridge bench
14 in San Onofre Creek, and grading of wetlands in San Mateo
15 marsh. This triggers the three-part test under Section
16 30233(a) for projects involving wetland belts. These three
17 tests are: the allowable use test; the alternatives test; and
18 the mitigation test. A proposed project must pass all three
19 of these tests to be consistent with this provision of the
20 Coastal Act.

21 Under the first of these tests, the project must
22 qualify as one of the seven stated allowable uses. TCA
23 maintains that the proposed toll road qualifies under the
24 fourth stated used as an incidental public service.
25 Incidental public service purposes, as defined by the Coastal

1 Act, include, but are not limited to buried cables and pipes
2 or inspection of piers, and maintenance of existing end take
3 and outfall lines.

4 TCA asserts that the proposed toll road fits
5 within the historically accepted interpretation of the terms.
6 The Commission staff disagrees. In the Bolsa Chica case, the
7 court affirmed that incidental public services are limited to
8 temporary disruptions and do not usually include permanent
9 roadway expansion. Previously approved projects that were
10 considered public services do not increase capacities, are
11 not new roads, and are bridge and road expansions that are
12 limited necessary to maintain existing traffic capacity, and
13 do not constitute a new alignment.

14 The proposed toll road is the exact opposite. It
15 is a new highway, which increases capacity by its very
16 definition. TCA's stated purpose and need is to alleviate
17 future traffic congestion, which also increases capacity.
18 The proposed toll road is not a limited expansion of an
19 existing road, and is not a temporary disruption.

20 The Commission staff concludes that the proposed
21 toll road cannot be considered an allowable use under Section
22 30233(a)(4).

23 The second test, the alternatives test, was
24 reviewed earlier by Mr. Delaplaine. The Commission staff
25 does not believe the preferred alternative is the least

1 environmentally damaging feasible alternative, and therefore
2 it does not pass the alternatives test.

3 Taking a look at this map, again, we can see that
4 permanent wetland impacts total 0.16 acres, and temporary
5 impacts total 7.7 acres. The Commission staff did not
6 receive a completed wetlands delineation until late December
7 of 2007. The delineation contained some classification
8 mistakes, so the acreage present, and the amount impacted is
9 currently underestimated, by some unknown, but probably small
10 amounts. In order for the Commission staff to assess the
11 effects of the 7.7 acres of temporary impacts, a detailed
12 description of each type of temporary impact was needed,
13 including whether vegetation is damaged, or removed, or soil
14 is disturbed, and the footprint of each type of impacts.
15 This information has not been provided.

16 Third and final test is the mitigation test.
17 Permanent impacts to wetlands would be mitigated at a 6.25 to
18 1 ratio, and would entail the creation of one acre of
19 southern willow woodlands. TCA submitted a very conceptual
20 mitigation plan. This map shows the location of the proposed
21 mitigation to be in a former agricultural field, directly
22 adjacent to an extended detention basin and the proposed the
23 toll road. It would be semi-isolated, apparently not
24 connected with either the San Mateo marsh wetlands, or the
25 San Mateo Creek wetlands.

1 There does not appear to be a significant buffer
2 between the mitigated land, and the detention basis, or the
3 proposed toll road, leaving it exposed to indirect impacts
4 from the highway, polluted runoff and edge effects.

5 TCA asserts that no buffer is needed because the
6 I-5 is already impacting the surrounding wetlands to the same
7 impacts that the proposed toll road would, but the Commission
8 staff does not agree. A buffer of at least 100 feet is
9 usually required for all mitigated wetlands, and the proposed
10 toll road would further exacerbate impacts from the I-5,
11 resulting in cumulative impacts that further diminish the
12 site.

13 Without a detailed mitigation plan that includes
14 descriptions of topographic alterations, histories of
15 hydrology, what exactly the extended detention basis is, and
16 how all of this will be constructed, this proposal cannot be
17 adequately evaluated.

18 As mentioned earlier, the proposed toll road would
19 need to pass all three of these tests in order to be found
20 consistent with Section 30233(a). TCA failed the first two
21 tests, and the Commission staff lacks sufficient information
22 to determine whether it meets the third test, because TCA has
23 not provided necessary details regarding temporary impacts
24 and the mitigation plan.

25 We conclude that the proposed toll road is

1 inconsistent with Section 30233(a).

2 [Audience Reaction]

3 CHAIR KRUEER: Again, we would ask you to keep your
4 audible response down, please, and just, you know, again,
5 wave your hands up if you agree, or thumbs down if you
6 disagree, okay.

7 STAFF ENVIRONMENTAL SCIENTIST ENGEL: Moving onto
8 archaeological resources, although there are numerous
9 archaeological resources in the project area, this
10 presentation will focus on Panhe, a significant and well
11 known group of resources.

12 The native inhabitants of Orange County belong to
13 the Acjachemen Nation. This map depicts the historical
14 boundary. For more than 10,000 years the Acjachemen people
15 occupied an area that ranged from Long Beach down to
16 Oceanside and from Lake Elsinore on the east, to Santa
17 Catalina nad San Clemente Islands on the west.

18 Ponhe is the ehtnographic village of the
19 Acjacherman, and is located, primarily, in San Diego County
20 on portions of San Onofre State Beach, and Camp Pendleton
21 Marine Corps base.

22 Ponhe consists of six sites, is part of the San
23 Mateo ecological district, and has been listed on the
24 national register of historic places since 1981. Two of
25 these sites are listed as sacred land sites with the Native

1 American Heritage Commission. Panhe contains human burials,
2 various cultural remains, and the memory of living Achachemen
3 people.

4 Today, Camp Pendleton grants permit access to a
5 small portion of Panhe, which serves as a reburial site, and
6 gathering place for present day Acjachemen religious and
7 ceremonial activities.

8 This photo, in the lower right-hand corner,
9 depicts an Acjachemen ceremony taking place on this site.
10 The aerial map on the left shows its location. The scale is
11 purposefully shown this way in order to protect the exact
12 location.

13 The disturbance limits of the proposed toll road,
14 which includes 90 feet of vertical grading, are depicted by
15 the white-hatched area. Although TCA has yet to define the
16 exact number of feet between the disturbance limits and the
17 ceremonial site, it is obvious that they are, essentially,
18 adjacent to each other.

19 Although TCA asserts this will not impact useage
20 of the site and generate only minimal and indirect impacts,
21 the Commission staff disagrees. TCA did not assess impacts to
22 the Acjachemen people, so it is unclear how it determined
23 them to be minimal and indirect.

24 According to the Achachemen who gather here, this
25 will have severe and irreparable impacts from the ceremonial

1 use of the site, greatly diminishing, if not permanently
2 destroying its functional use, due to the extreme proximity
3 of the toll road. Aside from the San Mateo Camp Grounds,
4 this small ceremonial site is the only site within all of
5 Panhe that all Acjachemen currently have legal access to.
6 The proposed toll road will impact both of these sites.

7 Since the exact locations of Panhe and other
8 archaeological resources are protected, this map identifies
9 their general location in and around the coastal zone, which
10 is the line shown here in blue.

11 There is no dispute that the proposed toll road
12 will have significant adverse impacts on multiple resources.
13 TCA acknowledges that it will directly and adversely impact
14 34 resources during construction, and indirectly impact an
15 additional 12 resources that lie within the buffer of the
16 disturbance limits. The Commission staff requested, but did
17 not receive, an assessment of impacts for resources listed on
18 the National Register. All 6 of Panhe's sites will be
19 impacted, 3 lie within the disturbance limits, and 3 lie
20 within the buffer area.

21 TCA believes it can mitigate impacts to below a
22 level of significance for most of the 34 resources; however,
23 impacts to some national register resources cannot be
24 mitigated below a level of significance because the resources
25 are associated with an event, period, or person in history

1 that cannot be sampled, collected, or recovered through
2 archaeological excavation.

3 There are at least three resources that will be
4 impacted in this manner. All three are found in the coastal
5 zone, and are part of Panhe and the San Mateo Archaeological
6 District. Avoidance mitigation measures would prevent these
7 significant adverse impacts. Avoidance of these three sites
8 would require moving the proposed toll road to a different
9 location, a mitigation measure that was not proposed by TCA.

10 The proposed mitigation for the Acjachemen
11 ceremonial site is a sound wall. However, TCA's general
12 layout plan shows the sound wall does not include the sites.
13 Commission staff required about this discrepancy but has
14 received no reply.

15 Section 30244 requires that reasonable -- sorry --
16 thanks -- Section 30244 requires that reasonable mitigation
17 be provided for adverse impacts to archaeological resources.
18 The question before the Commission is, is the proposed
19 mitigation reasonable?

20 The Commission staff has used the *California*
21 *Environmental Quality Act* standards as guidance for what
22 constitutes reasonable mitigation. Avoidance, by allowing
23 these resources to be preserved in place, or left in an
24 undisturbed state, is the preferred method of mitigation. If
25 avoidance measures are not included, the Commission staff

1 considers the case for why avoidance is not possible.

2 The mitigation proposed for the Acjachemen, and
3 for Panhe, is not reasonable. Avoidance measures were not
4 included, nor was an adequate case made for why avoidance is
5 not possible. Furthermore, these impacts will go
6 unmitigated.

7 Section 30244 identifies the State Historic
8 Preservation Officer, or SHPO, as an archaeological adviser
9 for the Commission. Both the SHPO and the federal advisory
10 council on historic preservation requested that additional
11 evaluations, called traditional cultural property evaluations
12 be performed by TCA. A traditional cultural property
13 evaluation assesses the role a property plays in the
14 community's historically rooted beliefs, customs, and
15 practices. These evaluations will provide a more complete
16 picture of impacts than currently exist, because it will go
17 beyond just physical impacts to the resource.

18 The SHPO and the advisory council requests a
19 traditional cultural property evaluations for both Panhe and
20 Trestles. Although Trestles is a surf break, both agencies
21 have found that it warrants review. Commission staff,
22 therefore, also enquired if TCA would perform these
23 evaluations, and it responded it would not.

24 Consistent with the SHPO opinion, the Commission
25 staff believes that TCA has not provided sufficient

1 information to enable identification of the full range of
2 impacts. Absent this level of analysis, the Commission staff
3 is not convinced all mitigation options, specifically
4 avoidance, has been explored. Therefore, the Commission
5 staff believes the proposed mitigation measures to be
6 premature and not reasonable.

7 In summary, the absence of traditional cultural
8 property evaluations for Panhe and Trestles, and the
9 unmitigated impacts to the Acjachemen people, and half of the
10 resources of Panhe, do not enable the Commission staff to
11 find that reasonable mitigation has been provided.
12 Commission staff, therefore, concludes that it lacks
13 sufficient information, and that the proposed toll road in
14 this location is inconsistent with Section 30244.

15 [Audience Reaction]

16 CHAIR KRUER: Again, please, please.

17 COASTAL STAFF ANALYST TOWNSEND: Moving onto
18 surfing, this is Trestles. Surfing has been --

19 [Audience Reaction]

20 CHAIR KRUER: Please.

21 COASTAL STAFF ANALYST TOWNSEND: - surfing is the
22 primary recreational activity and the epitome of a low-cost
23 coastal recreational resource. Located next to San Clemente,
24 at the mouth of San Mateo Creek, Trestles is world renown for
25 its consistent near perfect waves.

1 This picture shows the four primary surf breaks.
2 Trestles is distinctive because it has a variety of breaks
3 that are consistently available to surfers of all ages and
4 abilities year 'round. Known around the world as one of
5 California's best waves, it served 400,000 surfers last year.
6 Recent research indicates surfers visiting Trestles generate
7 between \$8 million and \$13 million per year for San Clemente,
8 and its chamber of commerce quotes surfing legacy as the
9 defining feature of the city.

10 Section 30220 requires that surfing at Trestles be
11 protected. The question before the Commission is, has TCA
12 demonstrated this? To answer this, we will review the two
13 characteristics that qualify Trestles as a world class surf
14 break. The first of which is the esthetics.

15 Trestles' coastal setting is virtually
16 unparalleled because all of the other major surf breaks in
17 the region are in urban settings and cities. It has a
18 relatively low amount of urban and agricultural development.
19 There is no parking lot right next to Trestles. A half-mile
20 walk from a highly urbanized Orange County to the beach, to
21 the relatively unspoiled San Mateo Creek wetlands natural
22 preserve -- shown in this photo here, upper right -- provides
23 a transition not experienced at other surfing beaches. It
24 affords opportunities for wildlife viewing, exposure to
25 native vegetation and open space, and quiet self reflection.

1 These opportunities are a rare experience in Southern
2 California, and therefore are highly valued.

3 The trail connecting the campground with the beach
4 will be substantially altered, thus dramatically changing its
5 current natural setting. TCA did not assess this as an
6 impact to surfers' recreational experience.

7 This is a visual simulation of the proposed toll
8 road as viewed from the surf break at Trestles. The top
9 image is its current condition, the bottom image demonstrates
10 that the proposed toll road will be visible to surfers, thus
11 changing the setting. TCA acknowledges that the natural
12 setting is an important component of Trestles, but maintains
13 these changes are not substantial, and would not impact
14 surfers; however, the Commission staff disagrees.

15 This image clearly shows that the proposed toll
16 road would be the most significant non-natural feature in the
17 landscape. These impacts to the trail and beach setting
18 directly impact the setting of Trestles. Part of the joy of
19 surfing is the feeling of escape from modern life. The
20 approach to the water, and the views experienced from the
21 water play a central role. If choosing between perfect waves
22 in Hong Kong or Kauai, most surfers would choose Kauai
23 because the esthetics of the surrounding environment
24 contributes greatly to overall enjoyment. In summary, the
25 Commission staff believes that the esthetics of Trestles will

1 not be protected.

2 The second characteristic that qualifies Trestles
3 as a world class surf break are its high quality consistent
4 waves. This map shows where the toll road, drawn in red,
5 crosses through three water sheds. At the bottom of San
6 Mateo Creek -- down here -- a fan shaped belt of cobbles lies
7 on the sea floor. These cobbles from the upper eastern San
8 Mateo watershed, descend through these various tributaries
9 and streams shown in light blue, and are eventually delivered
10 to the beach by San Mateo Creek during large storm events.
11 There is a general consensus that these cobbles are essential
12 for wave formation.

13 TCA acknowledges that impacts to the cobbles would
14 result to impacts to the surfing resources.

15 As detailed in the staff report, and as reflected
16 in recent scientific publications, any increase in the fine
17 sediment, or decrease in peak flow in the watershed, is going
18 to reduce cobble transport and change the specific mix of
19 sediments, sand, and cobbles delivered to the beach. It is
20 this specific mix of sediment that maintains the cobble
21 delta.

22 Now, let's take a look at the runoff management
23 plan. This map depicts a segment of this plan. Runoff from
24 anywhere along this portion of the toll road, would be
25 directed to bypass its normal pathway, which would be down

1 toward San Mateo Creek, and instead be routed to extended
2 detection basin No. 6 over here on the left. This is a
3 treatment of best management practice, or BMP, that filters
4 out sediment and pollution, then discharges runoff into this
5 downstream channel. This will increase the runoff volume
6 that is discharged from here, and is not accounted for in
7 TCA's analysis.

8 TCA refers to rain that falls everywhere else
9 except directly on the toll road as off-site runoff. This
10 includes all of the runoff draining from above this proposed
11 toll road, up here, and from these cut and fill slips shown
12 here in purple. None of the off-site runoff would be routed
13 through treatment BMPs. Instead, it would be directed to
14 pass underneath the toll road, and would be discharged
15 unfiltered into existing drainage channels, that currently
16 route runoff.

17 Rather than treating BMPs, TCA instead relies
18 solely on source BMPs, such as hydroseeding, or revegetation,
19 to prevent erosion. The proposed hydroseeding would have to
20 be 100 percent effective to keep the cut and fill slopes from
21 becoming a new source of fine sediments.

22 This picture is for illustrative purposes, and
23 shows hill slope erosion in a sparsely vegetated area. This
24 is what happened 10 years ago to TCAs San Joaquin Hills toll
25 road. The hydroseeding on a 35-acre ridge top was not 100

1 percent effective, and resulted in 10-foot deep gashes in the
2 land. An estimated 2,000 cubic yards of sediment was dumped
3 into Crystal Cove State Park. Based on that experience, and
4 the lack of detail insuring otherwise, the Commission staff
5 is not sure it is possible to prevent the introduction of
6 fine sediment into the watershed.

7 TCA relies on evidence from incomplete studies to
8 support the claim that the toll road will not impact the
9 watershed, or increase fine sediment. For example, TCA's
10 impervious surface analysis was not adequate, because it did
11 not take into account all of the alterations in the sub-water
12 sheds. TCA's flow duration plots are similarly incomplete
13 and account for only runoff from the toll road. Both of
14 these analyses mask the full impacts to the toll road, that
15 reveal the toll road will impact the San Mateo Creek
16 watershed and increase fine sediments.

17 In conclusion, if the toll road is built, erosion
18 and serious impacts to the sub-watershed level will most
19 likely occur. This would change the sediment composition
20 delivered to the beach, and affect the waves. We conclude
21 that TCA has not demonstrated that surfing at Trestles will
22 be protected, and therefore it is inconsistent with Sections
23 30220 and 30213.

24 I will now pass this to Dr. Gregg.

25 **ENVIRONMENTAL SPECIALIST GREGG:** The Commission's

1 water quality staff evaluted this project for consistency
2 with Section 30230 that marine resources shall be maintained,
3 enhanced, and where feasible restored; and Section 30231,
4 that biological productivity and quality of coastal water
5 streams, wetlands, estuaries and lakes to maintain optimum
6 populations of marine organisms, and for the protection of
7 human health shall be maintained, and where feasible
8 restored.

9 At this point, it appears the Commission lacks
10 sufficient information to determine whether the project is
11 consistent with those two policies.

12 Both San Mateo Creek and San Onofre Creeks are
13 healthy, and among the most healthy streams in Southern
14 California, because the watersheds are far less developed
15 than most Southern California watersheds. The proposed
16 detention basins on I-5 that TCA proposes to construct, will
17 help offset impacts of the watershed from increased runoff
18 and pollutant loadings from the 8 to 9 miles along and
19 outside of the project boundaries, but it is not clear that
20 they are going to provide a benefit that will mitigate for
21 the impacts within the project boundaries.

22 It is critical for this project that existing
23 hydrologic functions be maintained in order to mimic the
24 current conditions that transport sediment of hill slope
25 erosion, and water quality.

1 Back one, yes.

2 One of the major issues for this project is
3 whether it can be completed without creating additional slope
4 erosion that will impact both water quality, and the surfing
5 resources. Ms. Townsend has gone into this to some extent.

6 I think the major features of the project that
7 argue against their source control BMPs being effective is
8 the extreme size of the project. They will be cutting and
9 filling 41 million cubic yards of material throughout the
10 project, and the final project will result in 530 acres of
11 exposed slope that will be subjected to source controlled
12 BMPs, but as Ms. Townsend indicated, those BMPs are not 100
13 percent effective, and they are BMPs that have been developed
14 for use throughout the state on various Caltrans projects,
15 and are not necessarily the most appropriate for this
16 particular project.

17 The final slopes of some of these 530 acres are up
18 to 3:1 slopes. They are going to be very steep, and the
19 project will be removing existing soil and vegetation, and it
20 is very difficult to recreate that soil, recreate the ability
21 of the soil to resist erosion.

22 And, then, in addition, this project will be
23 crossing up to 20 sub-watersheds, that at each of these
24 points where the water passes under the road through
25 culverts, it is going to be concentrated from what was water

1 flowing across as sheetflow across the slopes, and will be
2 concentrated into a lower number of discharge channels, so
3 there will be additional flow and it will be reducing the
4 ability of the hill slopes to infiltrate water throughout the
5 watershed.

6 Some of the sub-watersheds, in some cases, up to
7 100 percent will be impacted by the road, and as low as 30
8 percent up to 100 percent.

9 The Phyllium Study of this site has indicated that
10 the proposed highway -- this is quoting from their letter of
11 January 22, 2008 -- the proposed highway will have major
12 impacts to 20 individual sub-watersheds that currently have
13 little development and related impervious area, and drain to
14 small channels that convey runoff to San Mateo and
15 Cristianitos Creeks.

16 These sand and silt dominated watersheds, and
17 related stream systems have developed an equilibrium with the
18 existing rainfall runoff dynamics. These fragile watersheds
19 are prone to instability, and rapid degradation with relatively
20 minor changes in raw patterns caused by changes in land use.

21 Introducing a new highway through these
22 undeveloped watersheds is likely to result in drastic impact
23 to both sediment production and channel habitat structure.
24 Thus the proposed State Route 241, with the associated 41
25 million cubic yards of cut and fill, 530 acres of exposed cut

1 and fill slopes, and over 136 acres of impervious surface
2 could easily cause potentially significant impacts to the San
3 Mateo Creek watershed.

4 One of the arguments made by TCA is that they will
5 be mitigating for the impacts of the actual pollutants coming
6 off of the highway by treating 8 to 9 miles of highway that
7 is not currently treated. There is some validity to their
8 argument that they can remove pollutants from that 8 to 9
9 miles of highway that, according to their engineering
10 estimates, would be more than the amount of pollutants that
11 they are going to be generating throughout the project.
12 That, I think, through engineering estimates they have shown
13 that to be a likely scenario.

14 But, what they haven't done is shown where these
15 pollutants are going to be discharged. They will be able to
16 impact the discharge of pollutants in the highway in the
17 lower part of the watershed next to the coast, but in the
18 upper parts of the water sheds, there will be -- because the
19 BMPs are not 100 percent effective, there will still be
20 pollutants discharged, highway pollutants, metals, oils, and
21 greases, that are passed through the extended detention
22 basins or the sand filter basins.

23 They try to argue that the benefit of these
24 volunteer BMPs should mitigate for any water quality impacts
25 of the highway. What they don't go on to explain, and is

1 explained by the Regional Board staff, is that the Regional
2 Board staff would expect that any five highways being
3 redeveloped or construction on highways throughout the
4 coastal zone would require new BMPs, so it is not clear that
5 this project is providing a benefit that would not have to be
6 provided by the state, itself, during additional Caltrans
7 work on Highway 5.

8 So, one of the other concerns has been that the
9 baseline study for water quality is inaccurate. Staff finds
10 that it is inadequate for evaluating whether the project is
11 going to impact the biological productivity, or the water
12 quality conditions, in the creeks.

13 The TCA did submit a new water quality monitoring
14 plan in its recent months, but it is still is inadequate, in
15 the sense that it only samples two locations during wet
16 weather over a 6-year period, but it still does not look at
17 the full range of impacts that are potential from this
18 project, including what are the actual biological impacts,
19 and what are the impacts over the wide range of areas that
20 are crossed by this project.

21 The other thing, their baseline work, the baseline
22 monitoring that they have done so far has been not adequate
23 for there to be an adequate assessment of the impacts of the
24 project, and it is also lacking any kind of contingency plan
25 that would explain how they would deal with this scenario

1 where their erosion control BMPs are not adequate, where you
2 can't demonstrate -- even if we are able to demonstrate
3 increased impacts of their project on coastal water quality,
4 they don't talk about what kind of contingency they would
5 have to address that.

6 And, in conclusion, water quality staff do not
7 find that the project is consistent with 30230 or 30231 of
8 the *Coastal Act*.

9 **COASTAL STAFF ANALYST TEUFEL:** Good morning
10 Chairman Krueger, and Commissioners, I will be discussing the
11 proposed project's potential and anticipated impacts to
12 coastal access, recreation, and visual resources.

13 I would like to begin by discussing coastal access
14 and coastal recreation resources. The proposed project would
15 result in significant adverse effects on public access and
16 recreation resources within the San Onofre State Beach. In
17 particular, the San Mateo Campground and the State Parks
18 network of public access and recreation trails would be
19 substantially degraded, removed, or abandoned, as the result
20 of the proposed project. Significant adverse effects would
21 occur both during construction and operation of the proposed
22 toll road.

23 As this slide indicates, many of the existing San
24 Onofre State Beach -- many of these existing San Onofre State
25 Beach recreation and beach access trails are within the

1 proposed project footprint. These trails are indicated in
2 red, while existing trails located outside of the proposed
3 project's disturbance limits are indicated in green.

4 The San Onofre State Beach access and recreation
5 trails, which would be adversely impacted by the proposed
6 project, include the Panhe Trail, a popular nature trail that
7 provides direct pedestrian and bicycle access between the San
8 Mateo Campground and the Trestles Beach.

9 If you can follow my pointer, this is the San
10 Mateo Campground, and the Panhe Trail is, approximately, this
11 trail, and this is Trestles Beach.

12 The upper Trestles Trail between the Trestles
13 Beach parking area and the Trestles Beach, would also be
14 effected. This is the Trestles Beach parking area, and this
15 is the upper Trestles Trail.

16 Additionally, a portion of the California Coastal
17 Trail, which follows a closed section of the old Pacific
18 Coast Highway, on the coastal side of I-5, would be affected.
19 This is the California Coastal Trail.

20 These three existing trails would be substantially
21 degraded both temporarily and permanently as the result of
22 the proposed project. As this graphic demonstrates, the
23 majority of the Panhe Trail would be removed from the inland
24 portion of San Onofre State Beach. This trail would be
25 replaced by TCA, as indicated by the proposed orange trail

1 alignment displayed here.

2 While this new trail would connect San Mateo
3 Campground to Trestles Beach, the recreation and access
4 opportunities provided by this new trail would be
5 significantly reduced, compared to existing conditions.

6 As this slide indicates, the proposed trail would
7 pass along, above, between, and below the proposed toll road,
8 and its associated overpasses, onramps, and elevated flyways,
9 for well over three-quarters of its length on the inland side
10 of I-5.

11 The increased elevation changes experienced on the
12 proposed trail, as it crosses above the toll road on the
13 proposed Christianitas Road overpass, as well as its
14 proximity to road and freeway infrastructure, would transform
15 this existing nature trail, make access more difficult, and
16 may degrade the popularity and recreational opportunities
17 provided by this longest trail in this portion of the park.

18 During the approximately three years construction
19 phase of the proposed project, within the coastal zone, and
20 prior to the development of this proposed replacement trail,
21 access and recreational use would also be adversely affected.

22 TCA has committed to insure that the beach access
23 will be protected during construction, but it is stated that
24 periodic trail closures and interruptions of pedestrian
25 traffic would occur. Considering the magnitude and duration

1 of grading, pile driving, and heavy construction activities,
2 the proximity of these activities to the access trails, the
3 likelihood of temporary closures, and the lack of details
4 regarding the manner in which beach access would be protected
5 and maintained, it is reasonable to believe that the trail
6 users would be discouraged from passing through the
7 construction area, and use of the Panhe Trail would decline
8 during proposed construction activities.

9 Further adverse impacts of the San Onofre State
10 Beach's recreational and low-cost visitor-serving resources,
11 would also occur as the result of the proposed project's
12 proximity to the San Mateo Campground, the only campground
13 within the State Parks that is open year 'round.

14 As this slide demonstrates, TCA's proposal
15 includes substantial grading, fill, and landform alteration
16 within several hundred feet of camp sites, and the placement
17 of the proposed toll road at a slightly more distant
18 location.

19 The limits of the grading are demonstrated on this
20 slide in green, and the campground is, approximately, here.

21 Adjacent to the campgrounds, the toll road would
22 be elevated, approximately, 30 feet above the existing grade
23 which would require the placement of large amounts of fill
24 material and the use of up to 30 transport trucks and heavy
25 graders for, approximately, 4 to 6 months.

1 In addition, although TCA has recently changed its
2 project description to avoid the use of pile driving during
3 the construction of the wildlife undercrossings, and the
4 Christianitas Road overpass, the placement of support
5 structures for these facilities would require the prolonged
6 use of loud drilling and boring equipment within,
7 approximately, 1,000 feet of the San Mateo Campground.
8 Approximate sound levels for these activities are not
9 available, as this type of construction was not contemplated
10 in the project's EIS, or TCA's construction noise analysis.

11 Anticipated sound levels within San Mateo Camp-
12 ground as the result of the use of the proposed toll road,
13 would require that TCA construct sound barriers along the
14 length of the toll road corridor that passes along the
15 campground area.

16 If you can see, on this slide above, the proposed
17 sound wall is, approximately, here, and follows along the
18 campground side of the proposed toll road.

19 The proposed sound wall would be, approximately,
20 4,000-feet long and 16-feet high. Noise analysis conducted
21 by TCA has demonstrated that despite the inclusion of this
22 sound wall, noise levels within San Mateo Campground would be
23 perceived as twice as loud as current sound levels. This 11
24 decibel increase from 47 to 58 decibels would interfere with
25 the relative quiet and seclusion that users surveyed have

1 revealed to be a key aspect of the campground popularity, and
2 would likely discourage use by tent campers desiring a more
3 natural camping experience.

4 The placement of the proposed toll road within
5 close proximity to the 161-site San Mateo Campground that was
6 developed as mitigation for the placement of the SONGS
7 Nuclear Generating Station, and the elevated sound levels and
8 visual intrusion which would result from its construction and
9 operation would adversely affect the campground's ability to
10 serve as coastal recreation and low-cost visitor-serving
11 resource.

12 Despite the location of the San Mateo Campground
13 outside of the coastal zone, the fact that this campground
14 contains important coastal recreation and low-cost coastal
15 accommodation resources that would be substantially degraded
16 or completely lost due to the proposed project, constitutes a
17 significantly adverse and unmitigateable effect on coastal
18 zone recreation resources.

19 I would like to close with a brief discussion on
20 the Commission's staff interpretation of the proposed
21 project's inconsistencies with the Coastal Act scenic view
22 protection policies. Visual resources are also closely
23 intertwined with recreation at San Onofre State Beach.

24 Staff recommends that the Commission find the
25 proposed project inconsistent with the Coastal Act's scenic

1 view protection policies because, (A), it would add to the
2 coastal public view shed a permanent feature that is not
3 visually compatible with the surrounding area; (B) less
4 damaging alignments are available that would significantly
5 reduce scenic view impacts; (C) the project does not minimize
6 alterations of the natural land forms; and (D) the project
7 has not been sited and designed to protect views to and along
8 the ocean and scenic coastal areas.

9 This is a view from the Panhe Trail to Trestles
10 Beach, and this is the proposed toll road.

11 This view is from the trail walking towards the
12 San Mateo Campgrounds from Trestles Beach.

13 The important link between the visual and
14 recreational resources as San Onofre State Beach and Trestles
15 add to, and exacerbate the extent of inconsistencies with the
16 public access, recreation, and surfing policies discussed
17 previously.

18 These slides are taken from the visual impact
19 discussion section of the project's EIS, and represents
20 visual simulations of the proposed project from various
21 locations within the coastal zone.

22 Although TCA has stated that the proposed toll
23 road would not be visible from Trestles Beach, and has lately
24 produced additional visual simulations to support this
25 statement, as this slide and the analysis and discussion

1 provided in both the staff analysis, recommendation, and the
2 project EIS indicates, the proposed project would be clearly
3 visible to those looking inland from the edge of Trestles
4 Beach, near the San Mateo lagoon, as this slide indicates.

5 That concludes my remarks, Mr. Delaplaine will
6 conclude.

7 **FEDERAL CONSISTENCY MANAGER DELAPLAINE:** Thank
8 you. Commissioners, one final note on Chapter 3.

9 It is our position that without mitigation for
10 green house gas emissions from extensive construction the
11 project is inconcistent with the energy and vehicle miles
12 travel policy, Section 30253(4).

13 To add this all up, and to get back to the
14 conflict resolution test, it is our position that the project
15 is clearly inconsistent with Chapter 3. It is not an
16 allowable use for ESHA, for wetlands, and is inconsistent
17 with a number of individuals policies, as we have just
18 explained.

19 So, the only way the Commission can approve this
20 project is if it finds that it is a conflict, and then,
21 again, if the conflict has been resolved in a manner most
22 protective of significant coastal resources.

23 TCA set forth four criteria by which it believes
24 that you could review this project under this policy, and
25 there might be a conflict.

1 Next slide.

2 What they have cited is water quality benefits
3 from -- okay, this is a slide of just the componsite overlay
4 of the ESHA, the wetlands, recreation, and showing the
5 project's footprint within those.

6 The next slide, these are the four criteria TCA
7 attests that could be used for the Commission to find a
8 conflict. Water quality benefits from its detention basin on
9 I-5; \$100 million to be used for the State Park system to
10 improve recreation regionwide, or statewide; benefits of
11 emergency evacuation from San Onofre, or increased ability to
12 respond to fires; and anincreased ability for inland visitors
13 to get to the shoreline.

14 We don't believe any of these rise to a level of
15 legitimate conflicts. The water quality benefits, you have
16 found, in cases where you have toxins, pollutants, that are
17 at dangerous levels, or where there is an impaired water body
18 that water quality improvements have been a valid use for a
19 conflict between water quality policies, say, and habitat
20 policies, but that is not present in this situation.

21 We don't believe that the emergency evacuation
22 potential really has anything to do with what the geologic
23 hazards policy is all about, which is minimizing risks from
24 the project, itself, so it is apples and oranges.

25 We don't think that it is legitimate to say,

1 "We are going to write you a check for a
2 specified amount of money, and if you don't
3 approve our project, then the money is not
4 available."

5 We don't think that is legal argument that can be
6 used if there is a conflict present.

7 We also think that a lot of the benefits that TCA
8 is alleging are present here could be made available through
9 not implementing the toll road, or through other means, such
10 as an I-5 widening project, that could also result in water
11 quality improvements, and could also result in increased
12 ability of visitors accessing the coast. So, any project,
13 really, that decreases traffic congestion is going to improve
14 public access.

15 So, we really don't see any ability to get to the
16 point of a conflict. They have cited a number of cases that
17 the Commission has reviewed in the past, Route 56. Again,
18 Route 56 was a situation where there was an impaired water
19 body, and the Commission found that habitat benefits were
20 going to be improved because the project was going to improve
21 wildlife migration. The coastal zone effects from that were
22 minor, and there were no alternatives.

23 They have raised the San Joaquin Hills toll road,
24 Route 73. Again, there were no alternatives available. The
25 coastal zone impacts were relatively minor, and the

1 Commission found that the impacts were able to be mitigated
2 in that situation.

3 North County Transit District case was one where
4 there were minor impacts, again on coastal zone resources,
5 and no alternative, and several other benefits from the
6 implementation of mass transit that has assisted in several
7 issue areas.

8 So, again, you don't have the situation there that
9 you have here, where you have unmitigable and extensive
10 adverse impacts.

11 We also think it sends the wrong message to accept
12 the money that TCA is proposing to improve recreation region
13 wide, when given the extensive adverse impacts on the state
14 park here.

15 We don't think this is a stretch of the *Coastal*
16 Act that the legislature intended, and the message that we
17 would like the Commission to send, especially, as it may be
18 that the collaborative is sitting down and looking at
19 alternatives, is that this alternative should not have been
20 considered a feasible alternative, just as several
21 alternatives were rejected closer in on Camp Pendleton,
22 further south, because, quote, the Marine Corps would not
23 allow them, unquote.

24 We think this alternative should be considered not
25 a feasible alternative because the *Coastal Act* doesn't allow

1 it.

2 This concludes my part of the presentation, thank
3 you.

4 CHAIR KRUER: Director Douglas, anything you would
5 like to add?

6 EXECUTIVE DIRECTOR DOUGLAS: Ms. Schmeltzer has a
7 comment.

8 CHAIR KRUER: Ms. Schmeltzer.

9 CHIEF COUNSEL SCHMELTZER: Thank you. I wanted to
10 elaborate on what Mr. Delaplaine was explaining about the
11 conflict resolution provisions of the *Coastal Act Section*
12 *30007.5*.

13 In order to use that provision, the Commission
14 must find that the project raises a conflict between two or
15 more policies of the *Coastal Act*, and the court in *Bolsa*
16 *Chica*, and in other cases, has discussed what that means, to
17 raise a conflict.

18 And, to paraphrase *Bolsa Chica*, what the court
19 said is that there must be such an acute need for a project
20 to solve a particular *Coastal Act* policy issue. For example,
21 in this case, the project proponents would say, for example,
22 public access. And, that that *Coastal Act* policy issue can
23 only be solved via this project.

24 Thus, saying that there is such an acute need for
25 improved public access that it can only be solved by building

1 a 6-lane highway in this particular location, and that on
2 balance, doing so would be more protective of coastal
3 resources, including all of the other coastal policies that
4 staff has listed, then not going forward with the project.

5 We have looked at that, and as staff has
6 elaborated on, we do not think that there is a conflict that
7 is raised. We do not think that the public access provision
8 has been demonstrated in that way.

9 As for the other Coastal Act policies that have
10 been raised, for example, the water quality benefits -- to
11 put this in the language of Bolsa Chica -- the claim would be
12 that the water quality benefits, such as improving storm
13 water runoff from I-5 can only be improved by building this
14 project, in this location.

15 And, a court looking at this will use a reasonable
16 person standard, and will have to determine whether a
17 reasonable person can find that the way to improve water
18 quality runoff from I-5 is to build this proposed project --
19 not to build the retention basins, because those are not
20 necessary to this project. They are just proposed as
21 mitigation to the project.

22 **EXECUTIVE DIRECTOR DOUGLAS:** Mr. Chairman, I just
23 have some closing comments here.

24 Mr. Chairman, members of the Commission, this is
25 the most significant project to come before this Commission

1 since the San Onofre Nuclear Power Plant in 1974. It is most
2 significant because of the large area of environmentally
3 sensitive habitat, wetlands, and other public resources, it
4 will destroy.

5 The fact is that it is unmitigatable under the
6 law, that it so clearly fails to meet so many *Coastal Act*
7 policies, and that it raises profound questions about our
8 environmental and social future in coastal California, and
9 the glaring negative precedent it would set, by among other
10 things, destroying a heavily used state park, whose principal
11 infrastructure improvements were installed as Commission
12 required mitigations for loss public beach access in front of
13 the nuclear power plant.

14 Since passage of the *California Coastal Act* in
15 1976, I know of no other coastal development project so
16 demonstrably inconsistent with the law, that has come this
17 far in the regulatory review process --

18 [Audience Reaction]

19 CHAIR KRUEER: Again, please, you know, if we are
20 going to proceed with the hearing today, and we will never
21 get through all of the speaker slips and everything else, you
22 people please abide by that, or we are going to have to stop
23 the hearing. I am going to ask you for one of the last
24 times, now, not to do that, please.

25 EXECUTIVE DIRECTOR DOUGLAS: This toll road

1 process is precisely the kind of project the Coastal Act was
2 intended to prevent, along with new coastal nuclear power
3 plants, new offshore oil and gas leases, coastal freeway
4 projects abandoned long ago, and new commercial ports that
5 also never came to be.

6 This project is the embodiment of the central
7 driver that motivated California voters to enact the coastal
8 initiative, that created the Coastal Commission in 1972.
9 That prime driver was overwhelming public opposition to
10 rampant industrialization and destruction of the coast by
11 massive new development projects, actual and imminent at the
12 time.

13 This toll road project is not only inconsistent
14 with the law, it also raises fundamental questions about what
15 kind of environmental and social future we want for our
16 coastal communities, our families, our children, and theirs.

17 We, especially, those privileged few of us,
18 entrusted with grave responsibilities for making momentous
19 decisions today that affect generations to come, must ask
20 these questions in the context of a larger perspective of
21 where we, as a society, are heading. This is a context that
22 includes a burgeoning population, the exponential loss of
23 environmentally sensitive and critical natural habitat, the
24 loss of affordable and accessible public recreation areas and
25 opportunities, massive disruptions of global climate with

1 devastating consequences, the inevitably congestion of new or
2 expanded freeways everywhere whose projected carrying
3 capacities were exceeded even before they were completed, a
4 context where demand for mobility must and can, ultimately,
5 only be met by mass public transit infrastructure, and in a
6 context wherein the decisions we make today are guided by
7 individual conscience and our own inner moral and ethical
8 compass, and not by the power of politics and monetary profit
9 for others.

10 We, as a staff in public service, and you as
11 Commissioners are keenly aware of our sworn duty to
12 objectively and fairly apply the requirements of law to the
13 facts before us. While bound by law, we are also
14 individuals, individual beings whose judgments is, obviously,
15 informed by social, environmental, and moral imperatives of
16 our time.

17 It is not hyperbole to suggest that this project
18 raises a paramount question int this pivotal moment of human
19 history that each of us must ask and answer in the conduct of
20 our own lives. Are we, as a people, wise enough and willing
21 to muster the courage of our convictions to stand firm for
22 what is right, and actively embrace a future that does not
23 repeat the failed practices of the past.

24 Can we focus our foresights on an environmental
25 future clearly in the best collective long term interest of

1 human and natural communities? A future that will require
2 sacrifice and will be costly to achieve, but one whose worth
3 is a proud legacy is beyond measure.

4 These are questions we must ask.

5 Mr. Chairman, that completes the staff report, and
6 our comments.

7 **CHAIR KRUER:** Okay, and what we are going to do
8 now, is to break for lunch and we will be back here at 1:30,
9 and I want to tell you that there are some concession stands
10 right outside and in back of the bleachers, and there are
11 some other things out here.

12 We will see everybody back here at 1:30, and we
13 will continue.

14 [Lunch Recess]

15 **CHAIR KRUER:** Okay, we are ready to go. Is staff
16 ready? okay. Commissioners, are you ready? okay.

17 And, before we open the public hearing,
18 Commissioner Blank has a procedural question.

19 **COMMISSIONER BLANK:** Yes, this is a question to
20 Director Douglas, for you and counsel.

21 I believe I have heard from both -- at least from
22 the applicant, that our jurisdiction in this area, even under
23 federal consistency, is limited to areas in the coastal zone
24 and out to the ocean, and does not include the watersheds,
25 and while the appellants, and I think staff, have stated that

1 our jurisdiction as Commissioners includes the watershed as
2 well, under federal consistency.

3 I just think for the Commissioners to be hearing 2
4 hours of testimony, our ability to sort out which part we are
5 listening to or not, could be helped by, maybe, staff
6 clarifying for all of us about which position, at least does
7 staff believe, is the law here in this hearing.

8 **EXECUTIVE DIRECTOR DOUGLAS:** Right, and as Mr.
9 Delaplaine pointed out, this is a federal consistency
10 certification, and not a coastal development permit, so the
11 Commission's jurisdiction, under the *Federal Coastal Zone*
12 *Management Act* includes areas outside of the coastal zone
13 that can be shown to have an impact inside of the coastal
14 zone.

15 So, that is a matter of determining that
16 connection, which enables the Commission to reach as far as
17 you need to go to address impacts inside of the coastal zone,
18 from a project that may have most of its development,
19 actually, occurring inland, or seaward of the coastal zone
20 boundary.

21 So, you have the jurisdiction here, under this
22 determination to look at all impacts that could affect
23 coastal resources.

24 **COMMISSIONER BLANK:** And, is that based on staff
25 opinion? case law? *Coastal Act*? where does that authority

1 come from?

2 **EXECUTIVE DIRECTOR DOUGLAS:** It comes from the
3 *Coastal Zone Management Act*, that is federal law, that the
4 Commission has authority to implement, ever since 1977, so
5 that is long not only law, but it has also been practice.
6 There has been litigation on it.

7 It is the way that you were able to address Navy
8 impacts and activities outside the coastal zone. This
9 Commission has reached out to sea over 300 and some miles,
10 when the Navy, at one point, proposed to scuttle obsolete
11 nuclear power submarines off of the northern California
12 coast, and when EPA wanted to incinerate toxic wastes 200
13 plus miles off of the Golden Gate, this Commission asserted
14 jurisdiction.

15 You have also gone inland in areas where impacts
16 of projects were outside of the California drawn coastal zone
17 boundaries, inland, and has impacts inside of the coastal
18 zone, on coastal resources.

19 So, this is not only law, it is practice, and it
20 has also involves some litigation challenges which have
21 upheld the Commission's jurisdiction.

22 **COMMISSIONER BLANK:** Thank you, Mr. Chairman.

23 **CHAIR KRUEER:** Okay, thank you.

24 And, before we open the public hearing, I would
25 like to ask for ex partes, starting on my left, on the end.

1 **COMMISSIONER KEMPTON:** Mr. Chairman, I just wanted
2 to report to the Commission that I did meet with represent-
3 atives of the Transportation Corridor Agencies, Mr. Rob
4 Thornton, Mr. David Lowe, Ms. Susan McCabe, yesterday
5 afternoon, February 5, in my office for about a half-an-hour,
6 and the purpose of the meeting was to discuss the balancing
7 provisions of Section 30007.5 of the *Coastal Act*.

8 **CHAIR KRUEER:** Thank you, sir.
9 Commissioner Achadjian.

10 **COMMISSIONER ACHADJIAN:** Yes, some of my ex partes
11 are on file, such as my meeting with Ms. Jordan and her group
12 on January 24, 4:00 p.m. in my office, and it is on file.

13 Ex partes within the last 7 days happened on
14 January 31, at 11:00 a.m. I did meet with Ms. Morgan Raferty,
15 Gordon Hensley, and Jeff Nyak, asking for my support for
16 staff's recommendation, to deny this consistency application.

17 Later, on Thursday, January 31, I also met with
18 Thomas Margo Frans Chekian [sic.] and Supervisor Campbell,
19 and discussed the critical need for the alternative to
20 Interstate 5 in southern Orange County, the benefits for SR
21 241, further discussion about the \$100 million to mitigate
22 impacts to the campgrounds, benefiting different parks. And,
23 all groups that I met with brought in their pamphlet -- and I
24 believe everyone received the same -- and they helped me walk
25 through. It was quite interesting. Both sides had a lot to

1 offer.

2 Thank you.

3 **CHAIR KRUEER:** Thank you, Commissioner Achadjian.

4 Commissioner Clark.

5 **COMMISSIONER CLARK:** Thank you, Mr. Chair. I have
6 a number of expartes to go over, and some of them are on
7 file.

8 The first one, on January 15, during an annual
9 Legislative Forum for local city officials in Sacramento, I
10 met with Senator Dick Ackerman in his office. His deputy of
11 chief of staff, Sharon Viola, and Brent Trenpas is his
12 legislative director. Senator Ackerman conveyed to me strong
13 support for the 241 toll road extension project, making the
14 following points. The project has been in study and
15 formulation for 15 years; it is essential to the
16 transportation plans and needs of south Orange County; the
17 project impacts on the environment are minimal; the toll road
18 extension route --

19 [Audience Reaction]

20 **CHAIR KRUEER:** Again, the Chair is asking that you
21 to please cooperate in this, as we want to be fair to every-
22 one, so let Commissioner Clark finish his ex partes, please.

23 **COMMISSIONER CLARK:** The toll road extension route
24 avoids the campground. Trestles Beach will not be impacted by
25 this project; and he recommended a site visit before the

1 Commission hearing and decision.

2 On the 24th of January, and again on the 4th of
3 February, I received telephone calls from Senator Lou Correa,
4 from the 34th Senatorial District. Senator Correa conveyed
5 this information to me, and position, his strong opposition
6 for the 241 toll road extension project, making the following
7 points, north Orange County expanded Interstate 5 several
8 years ago to relieve traffic congestion, and it is now time
9 for south Orange County to do the same. The 241 toll road
10 extension is proposed to go through a state park that was
11 created in mitigation for the San Onofre coastal development
12 and impact. There are better transportation alternatives, to
13 the proposed 241 toll road extension. The toll road will
14 significantly impact a state campground, Trestles Beach, and
15 surfing off of Trestles Beach will be tremendously impacted
16 by this project, and he recommended a vote of denial at the
17 Commission meeting.

18 On Wednesday, the 30th of January, in Manhattan
19 Beach, I met with Susan Jordan, from the California Coastal
20 Protection Network, James Burkeland, Natural Resources
21 Defense Council, Sarah Feldman, California State Parks
22 Foundation, Dan Silver, Endangered Habitat League, and
23 Michael Fitts, Endangered Habitat League -- discussed this
24 project.

25 The points covered by those meeting with me were a

1 description of park and its popularity and diversity of
2 visitors; the breadth of opposition to the project.

3 The fact that it appears this may be the first
4 time that a sitting governor has endorsed a project the state
5 has already suing to stop.

6 An explanation of the lawsuit filed by the A.G. on
7 behalf of the State Parks and Recreation Commission, on the
8 basis of failure to fully explore alternatives with fewer
9 impacts.

10 A review of the exemptions TCA has sought over the
11 years, their contention, erroneous, that the Coastal
12 Commission does not have permit jurisdiction over the
13 project, as well as their assertion that the Commission does
14 not have jurisdiction over impacts outside of the coastal
15 zone that impact resources within the coastal zone.

16 A review of the legal basis for denial of the
17 consistency certification, as well as a discussion of the
18 impacts.

19 A reference to the bi-partisan poll that clearly
20 demonstrates that even residents of Orange County oppose the
21 toll road when they learned that it goes through a state
22 park.

23 A discussion of Smart Mobility's report that
24 looked at conceptual modifications to the AIP alternative
25 that could significantly reduce displacements of homes and

1 businesses.

2 A discussion of the peer review by a top
3 transportation engineering firm, Bergman and Associates, that
4 confirmed that the TCA failed to apply urban context
5 sensitive design to the AIP alternative, which resulted in
6 grossly exaggerated estimates of displacements of homes and
7 businesses.

8 A discussion of the legality of TCA's last minute
9 \$100 million offer and how statements made by TCA in their
10 official communications misrepresented the position of the
11 Marines, the laws governing the transfer of lands, and fair
12 market value requirements -- and those were, basically,
13 inputs by those meeting with me.

14 Next ex parte I would like to convey occurred on
15 February 1, at 3:00 p.m. a telephone conference call from my
16 office. I received a call from Penny Alia, Barbara and Al
17 Sattler from the Sierra Club, and Jess Morten from the Sierra
18 Club South Bay, and South Bay Audubon Society. Their points
19 on this matter were as follows: the San Mateo Campground was
20 permanently set aside as mitigation for the San Onofre
21 Nuclear Power Plant, that TCA cannot use mitigated land for a
22 super highway; they opposed the use of dedicated park lands
23 for new infrastructures, it is not open season on parks.

24 Due to the non-compete clause, the I-5 will never
25 be able to be improved, if the toll road is approved.

1 The Smart Mobility Study peer reviewed reveals
2 that the I-5 can be improved at less cost, and with much less
3 relocation of homes than the TCA has asserted. Expert
4 opinion has indicated the project impacts to ESHA, threatened
5 and endangered species, and wetlands will be severe.

6 This project will serve as a precedent for the
7 appropriation of public park lands for private use, which
8 would threatened the integrity of other parks, including
9 those in the coastal zone.

10 Another ex parte, on Saturday, the 2nd of
11 February, I accepted an invitation from the applicant to
12 visit the site, and from approximately 2:45 p.m. in the
13 afternoon, this past Saturday, to approximately 5:15 in the
14 afternoon, I visited the site. Those from the applicant's
15 side in supporting it that participated in my site visit,
16 included Orange County Supervisor Bill Campbell, Mayor Sam
17 Alevido, from San Juan Capistrano, Mayor pro-tem of Tustin,
18 and vice chair of finance for OTCA, Jerry Amate, Thomas
19 Margro, TCA CEO, Ann Johnston, Paul Bopp, David Skelly, David
20 Lowe, and Donna Andrews.

21 The meeting consisted of the following, a review
22 of the aerial photograph of the project located within the
23 Camp Pendleton and coastal zone; review of a scale model of
24 the project; a map showing the project alignment and various
25 alternatives, alignments and modes that were analyzed,

1 including widening of I-5, as an alternative that was studied
2 at length; the public structure of the TCA, and collaborative
3 they decided to least environmental, practicable, feasible
4 alternative is the one proposed; a brief discussion of the
5 runoff control mechanisms that are proposed to be included in
6 the project, including capturing and treating roadway runoff
7 from the existing I-5, with current drains that currently
8 carries untreated water directly into the creek; a tour the
9 project connection to Interstate 5, including a walk along
10 the trail connecting the Cristianitos Road, parking to the
11 Trestles Beach; discussion of the source and role of cobbles
12 in forming the surf break; discussing the role of sediments
13 in forming the surf break; and their assertion that any
14 measurable increase in sediment will be prevented by proven
15 project design measures; review of existing structures in the
16 San Mateo Creek for Interstate 5, Old Highway 101, and
17 railroad track; discussion of the alignment of the structure
18 connecting 241 with Interstate 5, and views of the connecting
19 structure.

20 TCA, also, then discussed the relationship of the
21 proposed project to the existing railroad, the Old Highway
22 101, I-5, Trestles Beach, San Mateo Campground outside of the
23 coastal zone, various units of the San Onofre State Beach,
24 including emphasizing the state park is a lease hold that
25 expires in 2021; the existing bluffs campground that is

1 immediately adjacent to I-5 and the railroad.

2 TCA described it detailed objective review of the
3 Smart Mobility Report, including those by CalTrans, in the
4 cities that would be affected by such an alternative, and
5 their unanimous conclusion that the alternative is completely
6 infeasible and inconsistent with California law.

7 TCA discussed Orange County's previous approval of
8 the ranch plan EIR, and how, although the toll road extension
9 may be in play at the time, the number of dwelling units to
10 be constructed under the approved plan, 14,000 would go
11 forward with or without the project. I had asked the
12 specific question in looking at the map, as to what the areas
13 that were highlighted, that appeared to be development in
14 undeveloped areas along the proposed toll road, and they
15 indicated there are already 8 projects approved in the
16 county, and surrounding cities, with 14,000 residential units
17 to be built there. Their point was that whether or not this
18 toll road was approved, that those developments would go
19 forward.

20 TCA claimed that the conflict with the Coastal Act
21 wetlands ESHA policies can be balanced by extraordinary
22 benefits the project provides for. Their assertions were
23 water quality improvements, public access to coastal
24 resources, low-cost visitor-serving uses and accommodations,
25 provision of habitat creation, and public safety and national

1 security improvements.

2 Next ex parte, same day, I also had the
3 opportunity to have a tour on the Marine Corps base, Camp
4 Pendleton, escorted by Larry Ramos, Marine Corps liaison
5 officer to Camp Pendleton. He took me on a driving tour of
6 the entire alignment of the proposed SR 241 through Camp
7 Pendleton, outside of the coastal zone. He showed me the
8 existing operations of the base within the vicinity of the
9 proposed alignment, and mentioned that there might be
10 possible additional Marine readiness training developments in
11 work adjacent to the area associated with the proposed toll
12 road extension.

13 We stopped at several points along the way, where
14 I was able to get a visual of the length of the toll road,
15 through Camp Pendleton and in the coastal zone. I did note
16 that there was extensive existing coastal habitat in very
17 lush and good condition all along the route.

18 And, then, finally, my final ex parte was a call
19 on the 4th of February from Toni Iseman, Councilmember,
20 former mayor, and former Orange County Coastal Commissioner,
21 from Laguna Beach. In this communication call, that she
22 initiated, Councilmember Iseman conveyed her strong
23 opposition to the 241 toll road extension project, making the
24 following points: the 241 toll road extension is proposed to
25 go through a state park that was created in mitigation for

1 San Onofre coastal development and impacts; there are better
2 transportation alternatives to the proposed 241 toll road
3 extension; the toll road will significantly impact the state
4 campground; Trestles Beach, and surfing will be tremendously
5 impacted by this project; an approval of the toll road
6 extension would be extremely harmful, in terms of its
7 precedent for future transportation projects impacting the
8 coastal zone; and finally, that Laguna Beach city council
9 took a formal position of opposed on a 4 to 1 vote recently.

10 Mr. Chair, that ends my ex parte.

11 **CHAIR KRUER:** All right, glad you don't have to
12 repeat them.

13 For the Commissioners, I just want to point out,
14 if you have had ex partes, and you have filed prior, that
15 occurred more than a week ago, you can just say they are on
16 file, and you don't have to go through each one, because we
17 could be here all night, then, and won't even get to the
18 public hearing. I appreciate Commissioner Clark's thorough-
19 ness, but to expedite things, Commissioners, if they are on
20 file, fine, and if it has occurred in the last week, then you
21 should address it.

22 Commissioner.

23 **EXECUTIVE DIRECTOR DOUGLAS:** Your mike is not on.

24 **CHAIR KRUER:** Commissioner Kram.

25 **COMMISSIONER KRAM:** My ex partes are on file. I

1 do want to mention two of the communications, one from Mayor
2 Bobby Shriver, regarding the toll road, and the impacts on
3 the state park, and urging me not to support it.

4 Also, two conversations, I went down to visit the
5 site this past Saturday, meeting with Donna Andrews, Thomas
6 Margro, Bill Campbell, Sam Alevito, Jerry Amanti, and Robert
7 Thornton, David Lowe, Ann Johnson, and Paul Bopp. They gave
8 me a tour of the property, the propose site. We went down
9 through the park, went down through Trestles Beach, discussed
10 the alternatives, and a discussion of the cobbles, and the
11 history of the cobbles, reviewed the existing structures in
12 San Mateo Creek, Old Highway 101, the railroad track, and
13 toured up Cristianitos Road to view a location of the
14 project, in relation to San Mateo Campground.

15 They also discussed the relationship of the
16 proposed project to the existing railroad and PCH, I-5,
17 Trestles Beach, San Mateo Campground, and all of the areas
18 outside of the coastal zone, and that meeting was on
19 Saturday, February 2, and then was followed by a brief
20 conversation with the Camp Pendleton Community Plan and
21 Liaison Officer Larry Reynolds, who talked about how the
22 Marines are taking a neutral position on this project.

23 Other than that, my ex partes are on file.

24 **CHAIR KRUE:** Thank you, Commissioner Kram.
25 Commissioner Burke.

1 **COMMISSIONER BURKE:** The majority of my expartes
2 are on file, with the exception of a meeting I had in Mr.
3 Kram's office with Susan Jordan and the people from the Parks
4 Commission on the problems with the toll road.

5 And, this morning, while I walked out of here to
6 go get something out of my car, I was stopped by one of the
7 toll road representatives, and they asked if Commissioner
8 Hueso was going to be present, that's all of my ex partes.

9 **CHAIR KRUER:** Thank you, Commissioner Burke.
10 Vice Chair Neely.

11 **VICE CHAIR NEELY:** Mr. Chairman, my ex partes are
12 on file.

13 **CHAIR KRUER:** My ex partes are on file, with the
14 exception of these in the last week.

15 I got a phone call yesterday from ex-Senator Joe
16 Dunn, who told me that he was involved -- while he was a
17 Senator -- in working with the environmentalists and TCA to
18 come to an agreement on this proposed toll road, and what was
19 happening there, and he could not do it, and he wanted to
20 express that he supports the staff recommendation, the
21 rejection and denial of the concurrence.

22 I had a similar phone call yesterday from
23 Assemblywoman Saldana, and she expressed her support of the
24 staff recommendation, and the denial or rejection of the
25 consistency determination.

1 I also had a call yesterday from Senator Chris
2 Kehoe, who was very concerned about the precedence for State
3 Parks, and the campground, and the environmental issues that
4 have been raised in the staff report. She also supports the
5 staff recommendation, and was recommending its support of the
6 staff in this regard for a rejection, or denial of the
7 consistency determination.

8 Then, on Monday, I had a phone call, about 9:00 in
9 the morning, from Mark Massara, and Mark suggested very
10 strongly that we need to protect the last undeveloped parts
11 of California, and this may have long term impacts on
12 surfing, and the impacts to State Parks and the campgrounds,
13 this is the big issue. Mr. Massara said that the peer review
14 of the Smart Mobility Report is important, and I should
15 review that, and I have. And, that was his ex parte.

16 And, then, on February 1, also in the last week,
17 at 10:30 in my office in La Jolla, I had a meeting with Susan
18 Jordan, Sarah Feldman, James Burkland, Joe Reynolds, Michael
19 Fitts, and Philip Clark on the 241 toll road. We reviewed a
20 detailed briefing book, and discussed the alternatives to the
21 proposed Foothill South toll road project that were prepared
22 by Smart Mobility, Inc. They pointed out differences with
23 the TCA, in their statements, and they also told me -- I
24 would review all of their things, and if I had any questions,
25 I would get back to them, and I did that.

1 And, then, on the 1st in La Jolla, I had a meeting
2 with Dave Grubb and Jim Peugh in La Jolla, and they wanted me
3 to understand that they support the staff recommendation to
4 deny consistency.

5 And, like I said, my other ex partes are on file,
6 thank you.

7 Commissioner Wan.

8 **COMMISSIONER WAN:** Yes, most of my ex partes are
9 on file, except for two that I have had recently.

10 One, was a call from Susan Jordan on Sunday, don't
11 know the exact time, but it was during 4th quarter of the
12 Super Bowl, and -- which I left running -- and she asked me
13 if I had received all of the comment letters from their
14 experts, and I said that I had. And, then, she said that she
15 had met with Commissioner Kram and Commissioner Burke had
16 also come -- and at that point, New England scored a touch
17 down, and that was the end of the conversation.

18 I had another phone call that I initiated because
19 Senator Correa had sent me an email and asked me to call, and
20 this was considerably later in the evening, and Senator
21 Correa expressed his opposition to the project, asked me what
22 he could do to help. I said the best thing that he could do
23 would be to try to remove the political pressure on
24 Commissioners. That is the extent of my comments.

25 **CHAIR KRUE:** Thank you, Commissioner Wan.

1 Commissioner Blank.

2 COMMISSIONER BLANK: I have an extensive set of ex
3 partes on file, but last night at 6:30 at the Lodge at Torrey
4 Pines, I met with Susan Jordan, Elizabeth Goldstein, and two
5 other members of their team, and received yet, again, another
6 copy of this briefing book with more briefing materials. I
7 think it is my third copy, which the staff and the other
8 Commissioners have received.

9 And, then, we reviewed the key elements of the
10 appellants' opposition to the toll road, and I think
11 Commissioner Clark has, probably, extensively covered almost
12 every one of them.

13 This morning, just to make things interesting, I
14 still have sand in my shoes from taking a tour of Trestles
15 State Beach with TCA. I thought it was essential to not only
16 listen to them, which I had taken an ex parte from before,
17 but actually to go out on the site and walk the property with
18 them. And, I also got lots of paper work from them, but more
19 importantly, understood their points of view about the cobble
20 formation, the lack of footprints in the river. Then we
21 drove up to the campgrounds, listened to their description of
22 where the sound wall would go. We had some discussion about
23 decibel levels, and what would be acceptable for a camper,
24 and then I drove back here, and drank a large cup of coffee,
25 and have been here ever since. That is my ex parte.

1 **CHAIR KRUEER:** Commissioner Shallenberger.

2 **COMMISSIONER SHALLENBERGER:** Yes, I have one
3 exparte on file from a meeting in September with project
4 proponents in Sacramento with their representatives, Noxum
5 Gunther and Noxum Gunther -- two Gunthers.

6 And, then, yesterday, I had a meeting with Susan
7 Jordan, the executive director of the Coastal Protection
8 Network, Elizabeth Goldstein, president of California State
9 Parks Foundation, and James Burkland, Natural Resources
10 Defense Council, senior project attorney. They gave me the
11 same briefing book that all of the other Commissioners and
12 staff have. We spent a great deal of time just walking
13 through the briefing book, in terms of what was in there, and
14 the contents, so that I could go back and do it in more depth
15 later, myself.

16 In addition to that, they pointed out that TCA's
17 mandate is to build toll roads, and it is not to reduce
18 congestion. They said that the Marines had made it clear
19 that they won't look at the lease until close to 2020, and
20 that it won't be based upon whether or not there is a toll
21 road there.

22 They pointed out that 4 lanes are actually being
23 built now, but that most of the traffic impacts appear to
24 have been done on the assumption that 6 lanes were going to
25 be built. They said that it was premature, that litigation

1 -- as we have heard argued today, there is litigation
2 underway, and U.S. EPA says the EIR is not complete, and it
3 isn't expected to be completed until September of this year.

4 They addressed a little bit of the jurisdiction,
5 which saying that, in fact, that the project proponent is
6 saying we don't have jurisdiction. They asserted that we
7 did, and we have now heard from staff, their response to
8 that.

9 Then, very, very quickly they went through the
10 highlights of the major issues, that they think are
11 inconsistent with our Coastal Act. One is the ESHA being
12 degraded, public access to the beach. They also talked about
13 how much is going to be cut and fill, and paved over, about
14 530 acres total in the park. Their hydrologist has concluded
15 that the mitigation is inadequate and will result to impacts
16 to Trestles Beach.

17 And, finally, they said that there is not a net
18 benefit, that this issue of an evacuation route as a benefit
19 from San Onofre, that Southern Cal Edison already has an
20 evacuation plan in place, and nobody has found it inadequate.

21 And, that the foundation every year does a survey
22 of projects in parks, and this last year they found that
23 there were 110 projects in 73 State Parks proposed that would
24 be not mission related, and they bring this out as this kind
25 of creeping use of our State Parks as non-mission related

1 projects, and that this would be a very, very bad precedent.

2 CHAIR KRUEER: Commissioner Reilly.

3 COMMISSIONER REILLY: Thank you, Mr. Chair, all of
4 my ex partes are on file.

5 CHAIR KRUEER: Okay.

6 Commissioner Chrisman.

7 COMMISSIONER CHRISMAN: Mr. Chair, yesterday, in
8 my office, I had a meeting with Susan McCabe, Rob Thornton,
9 and David Lowe, with TCA, with general briefing on the
10 Transportation Corridor Authority projects.

11 CHAIR KRUEER: Commissioner Newton?

12 COMMISSIONER NEWTON: I have none to report.

13 CHAIR KRUEER: Okay, thank you.

14 And, with that, we will open the public hearing,
15 and what I would like to say at this time, is for everyone
16 for planning, et cetera, we are probably going to go -- we
17 have hundreds of speaker slips here, and we are going to do
18 the best we can do to hear from most of you, but we are going
19 to stop the speakers, the public, at about 8:30 tonight, so
20 that we have time to deliberate and to get this done.
21 Otherwise, if we took all of the speakers, I estimate we
22 would be here 38 hours -- so, it is a problem, for sure --
23 and, so just to give everybody that head's up.

24 So, with that, we will go now and open the public
25 hearing and go to TCA, who has an hour, and they have a group

1 of speakers, Tom Margro, Dave Skelly, Scott Taylor, Rob Ramey
2 and Steve Kaufmann.

3 And, we are going to set the clock, and we can
4 only set it for 59 minutes, right, but we will add another
5 minute on.

6 Do you know at this time, how much time you want
7 for rebuttal?

8 **MR. MARGRO:** Approximately 15 minutes.

9 **CHAIR KRUEER:** Forty-five, and 15 then?

10 **MR. MARGRO:** Yes.

11 **CHAIR KRUEER:** Okay, that would be fine.

12 Okay, and so you can go forward, and we will stop
13 the clock if people are walking up, or something. Your
14 people should be in order. It will help us to move and
15 expedite the hearing, if the next speaker is ready to go.

16 And, again, I ask the audience to please respect
17 the input, even if you agree or disagree. And, again, if you
18 agree you can put your hands up if you feel that way, and if
19 you disagree you can put thumbs down, but please let every
20 speaker have an opportunity, and let's keep the room quiet so
21 that we can move through this, and I really appreciate it.

22 So, thank you.

23 Okay, sir, you are up.

24 **MR. MARGRO:** Thank you, thank you, Mr. Chairman
25 and Commissioners. My name is Tom Margro. I am the CEO of

1 the Transportation Corridor --

2 CHAIR KRUEER: Would you pick your mike up, sir,
3 sorry.

4 MR. MARGRO: Is that better?

5 CHAIR KRUEER: Yes, you need to speak into it so
6 that the people in the back can hear you.

7 MR. MARGRO: Okay.

8 Mr. Chairman and Commissioners, my name is Tom
9 Margro. I am the CEO of the Transportation Corridor
10 Agencies. The TCA is a public agency governed by elected
11 officials in 12 cities, and 3 of which are coastal cities,
12 and the County of Orange. We are here today to seek a
13 consistency finding for the extension of State Route 241,
14 also known as Foothill South.

15 A lot has been said about this project, much of it
16 is flat-land true. There are so many false claims that I
17 want to focus on a few of the most egregious.

18 Myth No. 1, the project is on the beach and will
19 impact the surf at Trestles, this is not true. This is an
20 aerial photograph here, that you see, of the Trestles Beach
21 area. The railroad tracks and I-5 are shown in yellow, the
22 project alignment is shown in green. The beach is to the
23 left, more than half-mile away. The project does not touch a
24 single grain of sand on any beach.

25 Surfing conditions at Trestles are created by the

1 large cobblestones that are washed down San Mateo Creek, from
2 miles away in the Cleveland National Forest. The project
3 will have zero impact on the delivery of cobbles to the
4 beach. The project has been designed to have no net impact
5 on sedimentation. Sediment movement will be the same before
6 and after construction.

7 Myth No. 2, San Onofre State Beach Park is a
8 pristine wilderness, this is not true. While there is no
9 question the park is a nice place to visit, and recreate,
10 this park is on leased land owned by the Department of the
11 Navy, and is part of an active training base for the United
12 States Marine Corps. It is next to hundreds of homes in San
13 Clemente, and military housing on Camp Pendleton. The park
14 is traversed by Interstate 5, Old Highway 101, Cristianitos
15 Road, the Amtrak Railroad line, and high voltage lines. And,
16 of course, we all know, there is a nuclear power plant
17 between two of the parks coastal units, and military vehicles
18 pass within a stone's throw of the San Mateo Campground.

19 Myth No. 3, San Mateo Campground will have to
20 close when the toll road is built. This is not true. No
21 camp sites are displaced by this project, none. On average,
22 the toll road will be two football fields in distance from
23 the camp sites, and it will be shielded by a sound wall and
24 vegetation.

25 You know, if distance from a road to a campground

1 is the criteria for closure, the State Parks Department would
2 have already closed hundreds of camp sites, including the bus
3 campground at San Onofre State Beach. These camp sites are
4 within 225 feet of Interstate 5, and the Amtrak line.

5 Myth No. 4, building a road through the State Park
6 will set a precedent, this is not true. When the State of
7 California signed the lease for this park in 1971, the state
8 approved construction of a road in the park. How can I say
9 this? because the lease is the subject of the reserved right
10 of the federal government to approve roads in this area. The
11 State Parks Department's own general plan for San Onofre,
12 acknowledged in 1984, that the future route for the extension
13 of State Route 241 would be located within the park's lease
14 area.

15 And, finally, Myth No. 5, there is a superior
16 alternative to the project that has been proposed by TCA,
17 this is also not true. A very comprehensive process
18 concluded that this project is the best to relieve traffic
19 congestion for the least amount of impact to communities and
20 the environment.

21 Well, enough on this Commissioners, let's talk
22 about more serious things. The 241 completion will provide
23 congestion relief for one of the most important traffic
24 corridors in this state. Commuting traffic here is already
25 in gridlock much of the time. Traffic on the weekend is even

1 worse. Traffic between San Diego County and Orange County
2 will increase 75,000 vehicles per day by 2025, making coastal
3 access much more difficult.

4 You know that we have 24 million people in
5 Southern California, and nearly as many cars and trucks. Our
6 population will increase by another 11.3 million by 2050.
7 California happens to be the 11th largest economy in the
8 world. Traffic from Mexico is growing. The ports of Los
9 Angeles and Long Beach generate enormous regional traffic,
10 and the number of weekend recreational drivers heading to
11 Orange and San Diego County beaches, and other attractions,
12 just keeps growing.

13 So, how does this traffic get back and forth
14 between Orange and San Diego Counties? Well, there is only
15 one way, Interstate 5. The fact that Southern California
16 needs an alternative to I-5 in this area has been recognized
17 for decades. Two regional agencies are responsible for
18 planning regional transportation improvements: SCAG and
19 SANDAG. The plans for both regions have identified
20 completion of State 241 as a critical component. The project
21 is also a critical component of the Orange County Transport-
22 ation Authority's long range plan. CalTrans, responsible for
23 state-wide transportation planning endorses the completion of
24 State Route 241.

25 Commissioners, the planning for this project was

1 not done in a vacuum. Let me take just a few moments to
2 describe the process. First, as I mentioned, SCAG and
3 SANDAG, recognized the need for an inland alternative to I-5
4 and included State Route 241 on their transportation plans.

5 Second, four federal agencies, the Environmental
6 Protection Agency, the Army Corps of Engineers, Federal
7 Highway Administration, and the U.S. Fish and Wildlife
8 Service, along with CalTrans, worked with the TCA for six
9 years evaluating the best way to address the future
10 transportation needs of this region. These experts met more
11 than 50 times over 6 years. They identified 24 -- that's
12 right -- 24 different routes, including alternates such as
13 widening I-5, and arterial street improvements.

14 After years of technical analysis of the 24
15 original alternatives, 8 were selected for detailed
16 examination in our EIR and EIS. One by one, these
17 alternatives were discussed and evaluated. The varying
18 factors and impacts were weighed and considered in many, many
19 public hearings and meetings. At the conclusion, in an
20 unanimous decision, the transportation and resource agencies
21 involved agreed that the alternative reflected in our
22 application is, and I quote, "The least environmentally
23 damaging, feasible, alternative."

24 You know, a massive EIR EIS documenting project
25 impacts was written and circulated widely. Hundreds of

1 people participated in this document review through meetings
2 and hearings. The TCA board of directors selected this final
3 alternative after a very lengthy public hearing. The TCA did
4 not choose this route unilaterally. The project alternative
5 was the result of a very real collaboration. The project was
6 open. It was deliberative, and it was responsive to the
7 transportation needs of Californians.

8 It also responds to the new state policy of
9 reducing green house gas emissions. Analysis by consultants
10 to the TCA shows that after 5 years of operations, the 241
11 extension project will provide a net benefit, in terms of
12 green house gas emissions. This occurs because the project
13 reduces congestion and emissions by moving traffic more
14 efficiently.

15 Commissioners, I want to emphasize another matter
16 that is important to your deliberations today. The
17 Commission staff proposes, as an alternative to this Route
18 241 -- and as you heard -- to widen I-5 through San Clemente,
19 San Juan Capistrano, and Dana Point, all the way up to Lake
20 Forest. Staff relied entirely on a report paid for by
21 project opponents and prepared by an east coast firm, whose
22 engineers are not licensed in California. The report
23 suggests that I-5 can be widened through extraordinary non-
24 standard design processes, in order to minimize property
25 takings. The designs employed by the opponents, Vermont

1 Engineers, do not meet CalTrans standards by a long shot, nor
2 do they achieve city street standards. Put simply, they are
3 not feasible, and they are not safe.

4 CalTrans, a state agency authorized to design,
5 construct and maintain state highways has concluded the
6 following, and I quote from one of their correspondence:

7 "The alignment proposed by Smart Mobility, Inc.
8 does not meet department standards, and does
9 not meet applicable engineering standards of
10 care; therefore the department cannot support
11 the proposed design requirements for conclusions..."
12 That is extremely significant.

13 Now, back to the widening plan. Following correct
14 and current CalTrans Standards, the environmental document
15 included widening I-5 as one of the alternatives that was
16 equally analyzed. These analyses showed that widening would
17 destroy 838 homes, and 383 businesses, including 15 hotels
18 and motels that provide over 500 rooms of affordable lodging
19 for coastal visitors. In human terms, the widening would
20 displace nearly 2,000 people from their homes, and eliminate
21 the jobs of more than 4,000 individuals.

22 In real life, the I-5 widening would devastate the
23 unique coastal neighborhoods of Dana Point, San Juan
24 Capistrano, and San Clemente, expanding the freeway to
25 between 14 and 18 lanes forever altering the unique coastal

1 character of these communities. Incredibly, staff makes
2 these recommendations knowing that widening of I-5 is
3 financially infeasible. The state faces a \$500 billion
4 infrastructure deficit. No state or federal funds are
5 programmed for the widening of I-5, and CalTrans concurs that
6 there is no foreseeable funding source to build a \$2 to \$3
7 billion project to widen I-5.

8 Well, let's spend some time on the important
9 subject of the Trestles surfing beach. Responding to
10 concerns from surfers about Trestles, we commissioned several
11 studies of the geology and hydrology of the San Mateo Creek
12 watershed. We have two experts here today who will discuss
13 these studies. Our next two speakers will address the wave
14 and sediment dynamics in the watershed that affect Trestles
15 Beach, and our proposed state-of-the-art runoff control and
16 water quality control programs.

17 Dave Skelly will speak first. He is vice
18 president and principal engineer for Geo Soils, and will be
19 followed by Scott Taylor, who is senior vice president of
20 Water Resources for RBF Consulting.

21 **MR. SKELLY:** Thank you.

22 Mr. Chairman, Commissioners, Dave Skelly with Geo
23 Soils. I am here today to talk about how this project
24 protects the surfing resources at the mouth of the San Mateo
25 Creek.

1 This slide shows the watershed. At the very top of
2 the slide there you see Lake Elsinore, a relatively large
3 watershed. The green line shows the alignment, footprint of
4 the toll road. This represents less than 1 percent of the
5 area within the watershed, and the underlying soils are silt.

6 The cobbles that make up the delta that is
7 responsible for performing the breaking wave come from the
8 very eastern portion of the watershed that you see in the
9 shaded area. There are no cobbles found along the proposed
10 alignment -- as a matter of fact, there is no controversy
11 about that.

12 Remember, as previously stated, the pre- and
13 post-project hydrology will be virtually identical, so the
14 sedimentation processes will not be significantly altered.

15 Now, the lagoon is closed 99 percent of the time
16 -- maybe 98 percent of the time -- only when the lagoon is
17 open will anything that happens within the watershed impact
18 the coastal processes. The lagoon hasn't been open since
19 2005. It takes about a 2-year recurrence interval rain event
20 to actually breach the berm that closes off the lagoon.

21 The prevalent condition of being closed is
22 significant, because 99 - 98 percent of the time there is no
23 impact on coastal processes. Some will say this makes the
24 other small 1 to 2 percent of the time that it is open very
25 important.

1 Well, let's look at what happens when the berm is
2 breached, and the watershed communicates with the shoreline.
3 Besides the initial flush of the stagnant bacteria laden
4 water into the surf zone, the creek transports silt, which is
5 very small material, sand, and if the rainfall event is big
6 enough, it will transport cobbles the size of footballs down
7 onto the shoreline.

8 It takes about a 50-year reoccurrence interval
9 event to even move the cobbles from the watershed into the
10 surf zone. Again, no cobbles are found along the alignment,
11 which is, again, primarily silt.

12 As I showed you, the cobbles come from way up in
13 the watershed. The cobbles that will provide the foundation
14 material for the surfing resources on the delta for the next
15 several centuries are already in the river bed.

16 The sand that fills in the cobbles comes,
17 primarily, from up and down the coast. Hundreds of thousands
18 of cubic yards of sand move up and down the coast every year.
19 That is why the lagoon closes off.

20 Many years there is little or no sand that comes
21 down from the creek. When the sand does, it is usually on
22 the order of a few thousand yards, and it is quickly moved
23 away from the delta by wave action.

24 These facts have been presented on surfermag.com
25 web site. I would suggest everybody go there, as it is

1 pretty good informational piece, and I believe the Commission
2 has a copy of that.

3 Because the project only impacts a small portion
4 of the watershed, and it is not constructed of sand or cobble
5 material, it will not measureably impact the delivery of sand
6 and cobbles to the surf zone, so the good news is, Trestles
7 is safe, it was never at risk.

8 Just how tough is the San Mateo Creek delta? what
9 can it take? Well, the delta is a very robust feature. It
10 is not sensitive to extremes, 30-foot waves break on this
11 delta.

12 This slide shows the shoreline in 1969, after the
13 fifth year rain event. The shoreline built out hundreds of
14 feet.

15 This next slide shows the shoreline one year
16 later, shows that it has eroded back hundreds of feet. This
17 is a very dramatic, a very dramatic change, and it
18 illustrates the toughness of this high energy environment.

19 Now, the nature of the opponents' expert rebuttals
20 to our next analysis is, essentially, speculative in nature.
21 These experts provide little, if any, analysis, and don't
22 quantify any of their speculated impacts. The opponents use,
23 in siting, buzz phrases, like destroy Trestles, and
24 destabilize the watershed, without really any supporting
25 explanation.

1 Their experts also make unsupported statements
2 that somehow are parroted by your staff. Here is an example
3 from the Phil Williams Report:

4 "Recent research indicates that the movement
5 of cobbles under wave action is greatly
6 affected by the amounts of finer sediments
7 that fill the voids in the cobbles."

8 First off, PWA provides no reference. They don't
9 define their statements, or what is finer sediments? And,
10 this statement is really counter-intuitive because silts
11 don't deposit in the surf zones, it is too high energy of an
12 environment. But, in order to be open minded about this
13 statement, we contacted two coastal process experts at the
14 Scripps Institute of Oceanography. Both Dr. Rheinhard Flick,
15 who you know as the Cal-boating oceanographer, and Dr. Scott
16 Jenkins, agree that fine sediments do not deposit in the surf
17 zone, and play no role in surf zone cobble transport.

18 You know, this is not the first highway built in
19 Southern California that connects to another highway near a
20 surfing resource. Here is a list of some examples, and none
21 of these have had any impact on the nearby surfing resources.
22 You recently approved Highway 56 in San Diego, which has had
23 no effect on nearby Del Mar and La Jolla surfing resources.

24 Most notably, on this list, is SR 150, which
25 transects many miles of Rincon Creek, of the Rincon Creek

1 watershed, and terminates near Rincon, a world class, cobbled
2 bottom surf spot. Rincon is rated higher on Surf Lines'
3 perfecto meter than Trestles. This is a very similar setting
4 to the proposed SR 241. This road is a little over a half a
5 mile from the epic resource Rincon, but this road was built
6 decades ago, not using present day construction methods, or
7 water quality control practices, but there is absolutely no
8 evidence that this road, in place for many decades, has had
9 any impact on Rincon surfing.

10 In closing, there will be no change in pre-imposed
11 project hydrology, no measurable change in sedimentation
12 within the water shed, and there will be no measurable impact
13 on coastal processes, and finally, there will be no impact on
14 the surfing resources at the delta.

15 Thank you.

16 Now, I would like to have Scott Taylor come up.

17 **CHAIR KRUEER:** Okay.

18 **MR. TAYLOR:** Thanks, Dave.

19 Scott Taylor, for TCA. Commissioners there has
20 been a significant amount of discussion regarding the impact
21 of the project on sediment discharge, and the composition of
22 sediment. There also has been extensive fact-checking on the
23 project's benefit for water quality; however, there are two
24 fundamental truths.

25 First, we have put measures in place to insure

1 that both sediment discharge, and storm water runoff, will
2 remain, virtually, unchanged after the project is
3 constructed.

4 And, second, there will be an overall benefit for
5 water quality in the coastal zone with this project; however,
6 some myths about these issues have persisted at the technical
7 level, and I would like to take the opportunity to address
8 some of them now.

9 Myth 1, the roadway was not analyzed at a sub-
10 watershed scale, and consequently the roadway will increase
11 runoff resulting in the erosion of sediment. Fact, the
12 roadway was analyzed at a sub-watershed scale, using a state-
13 of-art continuous simulation computer program developed by
14 the U.S. EPA to compare before and after project flows. The
15 result is that there will be virtually no change in storm
16 water runoff, so there will be no associated change in
17 sediment flow to San Mateo Creek or Trestles.

18 Myth 2, an increased in paved area, or grading at
19 the sub-watershed scale, will cause erosion in local creeks.
20 Fact, the studies cited by staff and the project opponents,
21 which include the graph that you see here, are for
22 investigations that did not have state-of-the-art flow
23 controls in place in those watersheds. Since the TCA project
24 has state-of-the-art mitigation for flow increases, the cited
25 studies will have no relevance as a predictor for performance

1 of this project.

2 Myth 3, an increase in fine to medium sediment,
3 from either the roadway, the slopes, or the construction
4 operations, will result in a reduction of coarse sediment
5 delivery to Trestles Beach. Fact, as I have said, although
6 the project will not increase fine to medium sediment
7 discharge, this entire concept is incorrect. Shown are two
8 quotes, the first from a researcher at the University of San
9 Francisco, indicating that sand added to a gravel bed
10 increases, not decreases, the gravel mobility.

11 And, the second, from the American Society of
12 Civil Engineers, sedimentation engineering handbook,
13 indicating that increasing fine to medium sediments will
14 enhance, not decrease, the transport of coarse grain
15 sediments.

16 These references directly conflict with the
17 unsupported claim in the report by Philip Williams and
18 Associates.

19 The result, although there will be no significant
20 change in fine to medium grain sediments, sediment production
21 with the project, a theoretical increase would not affect
22 cobble transport in San Mateo Creek.

23 Myth 4, best management practices will not be
24 sufficient or 100 percent effective in stabilizing the
25 project's slopes. Fact, the slopes will be monitored and

1 replanted as necessary to insure vegetation establishment.
2 Prior to this, soil binders, and other very effective
3 measures, reviewed by the State Water Resources Control
4 Board, will be used to insure slope stability.

5 The result, the natural erosion rate can be
6 reasonably approximated on new slopes, both during and after
7 construction with a careful application of the selected
8 measures.

9 And, finally, I would like to say a word about
10 post-construction storm water quality. Improvement of water
11 quality has been a major focus of our engineering program,
12 yet the myth persists that there will be no water quality
13 improvement with the project. Fact, the new sand filters
14 that will be installed along a 2-mile portion of Interstate
15 5, and throughout the San Mateo Creek watershed, will create
16 a benefit for the targeted pollutants at the Trestles Beach
17 area. Sand filters are among the most effective devices for
18 highway storm water quality.

19 Commissioners, I hope you have heard me explain
20 today that there is no technical basis to deny this project
21 for water quality, or for changes in sediment discharges,
22 because we have developed a state-of-the-art storm water
23 program to address these resources.

24 At this point, I would like to bring back, Mr.
25 Margro.

1 **MR. MARGRO:** Thank you, Scott.

2 Let me just briefly address cultural resources.
3 Our environmental documents fully recognize the presence of
4 places within the project area that are culturally and
5 historically sensitive, especially to Native Americans.

6 This is not a new subject for TCA. We began
7 working with Orange County tribal governments in 1996,
8 including numerous meetings and onsite tours. The history of
9 consultation has resulted in the analysis and refinement of
10 the preferred alternative to avoid sensitive resources that
11 have the highest value.

12 We have, and will continue to treat sensitive
13 resource sites with the appropriate dignity and care that is
14 warranted. The law demands it, and TCA operational culture
15 embraces it.

16 Before onto endangered species, I would like to
17 address wetlands. We fully understand the importance of
18 wetlands, avoidance of wetlands is a priority for us. As the
19 project crosses into the coastal zone, it bridges over San
20 Mateo Creek to connect to I-5. The north and south connector
21 bridges span over 3800 feet, respectfully, 7 times the length
22 of the I-5 bridge over the same creek. We designed the
23 bridges with the longest spans possible to reduce the number
24 of columns in the creek to just four.

25 The map that you will see shows the location of

1 the four columns in San Mateo Creek, the wetland impact area
2 for new abutments for the bridge over San Mateo Creek --
3 which I-5 also crosses today -- and the wetland fill due to
4 the realignment of a dirt military road that runs parallel to
5 I-5.

6 Our engineering minimization effort resulted in
7 the permanent wetland impacts in the coastal zone of only
8 0.16 of an acre, the size of a tennis court. This 16/100th
9 of an acre of impact will be offset by the creation of a new
10 acre of wetland within the coastal zone at a ratio of 6.25:1.
11 This will fully compensate for impacts to coastal wetlands,
12 resulting in a net gain of functional capacity.

13 Let's now turn to environmentally sensitive
14 habitat, and other biological resource issues. To discuss
15 this, I will introduce Dr. Rob Roy Ramey. Dr. Ramey has more
16 than 27 years of experience in field research, wildlife
17 genetics, and hands-on conservation of threatened and
18 endangered wildlife.

19 **MR. RAMEY:** Rob Roy Ramey, here. Commissioners,
20 thank you for this opportunity to address misconceptions
21 regarding biological impacts of the proposed project.

22 Will the project have an impact on the Pacific
23 pocket mouse, or its habitat? No, it will not, and here is
24 why. First, Pacific pocket mice have never been captured
25 within the project footprint, or the coastal zone.

1 As you can see, from this slide, they are
2 restricted to a small area outside of the coastal zone.

3 The fact that 9 years of surveys have neither
4 identified a pocket mouse in the coastal zone, or the project
5 footprint, is powerful evidence that they do not exist there,
6 and that there is not an impact to this sub-species.

7 Second, staff report, and opponents claim, that
8 75,000 traps, set over 9 years did not identify a pocket
9 mouse, but just might have missed a mouse. There is no data
10 to support this claim. As a scientist, I base my evaluation
11 on evidence. I do not base my evaluation on evidence that
12 does not exist. The extensive survey program used, and the
13 trapping protocols, were approved by and supervised by the
14 U.S. Fish and Wildlife Service.

15 But, our evaluation of the evidence, did not begin
16 and end with the surveys. We also mapped the soils, the
17 vegetation type, the slopes, and most importantly, former
18 agricultural areas to identify potential habitat for the
19 mouse. When we mapped the areas that were disturbed by the
20 agriculture, the reason we were not finding pocket mice south
21 and east of this occupied area became abundantly clear.

22 As you can see, from the historical aerial
23 photographs, these former agricultural areas, where the soil
24 has undergone tillage, and cultivation, are unsuitable to
25 pocket mice. Nine years of surveys have shown that they do

1 not permanently occupy these former agricultural lands in
2 this location. You might find them along the edges of the
3 agricultural fields, but that is it.

4 It is my professional view that construction of
5 this project is entirely compatible with the recovery of the
6 Pacific pocket mouse. TCA is committed to a permanent
7 endowment for an intensive pocket mouse management program.
8 TCA's plan is that which provides the best hope of recovery
9 of this sub-species in the area.

10 The management plan will contribute to and enhance
11 the recovery of the pocket mouse. We detailed a scientific
12 approach for evaluating the effectiveness of the purposed
13 conservation measures, all of which are compatible with the
14 federal recovery plan for the pocket mouse.

15 The opponents claim that this approach is
16 unproven, and that more study is needed; however, these same
17 arguments were leveled against intensive management programs
18 on the California condor, the peregrine falcon, and Sierra
19 Nevada big horn sheep. Yet, it is precisely because of the
20 -- in these cases -- a well funded intensive management
21 program was undertaken that these species are on their way to
22 recovery today. And, I have had first hand experience with
23 all of those, and in fact, I have flown down this very
24 coastline in a helicopter with condor eggs destined for the
25 San Diego Zoo to launch that captive breeding program.

1 So, I am confident that we can reverse the decline
2 of the pocket mouse in this area, and facilitate the recovery
3 of the sub-species in the long term; however, without the
4 proposed project, there would neither be adequate funding,
5 nor the commitment to carry out the plan.

6 Next, will the State Route 241 have a long term
7 adverse impact on the arroyo toad? the gnatcatcher? the
8 tidewater goby? or the southern steelhead? no, it will not,
9 and here is why. The arroyo toad is widespread in San Mateo
10 and San Onofre watersheds, with nearly all of its extensive
11 local distribution on Camp Pendleton, well inland of the
12 coastal zone, as you can see from the dots on the map.

13 The arroyo toad does use San Mateo Creek; however,
14 the project is entirely on structures over the San Mateo
15 Creek, and thus impacts to the toad are minimal. Permanent
16 impact in the coastal zone portion of the project would
17 result in an impact to potential breeding habitat of about
18 11,000th of an area, about the size of a 2-car garage, due to
19 necessary bridge supports.

20 As with the pocket mouse, opponents claim
21 uncertainties about the aggressive, multi-faceted mitigation
22 plan for the arroyo toad in the project. And, the opponents
23 ignore the ongoing efforts to protect the arroyo toad
24 regionally. Those include the Orange County sub-region NCCP
25 plan, and locally this toad is benefiting from ongoing

1 management in upland areas on the Marine Corps Camp Pendleton
2 base, adjacent to the proposed project and the coastal zone,
3 through the integrated natural resources management plan on
4 base.

5 Specific to the proposed project, and like the
6 pocket mouse, mitigation measures in the coastal zone have
7 been designed to prevent losses to toads during construction.
8 These measures are similar to those recently approved and
9 implemented by the U.S. Fish and Wildlife Service and
10 CalTrans for State Route 74. TCA has also proposed to
11 removing evasive species of animals that prey on toads,
12 including crayfish and bull frogs, as well as invasive plants
13 that choke out their habitat.

14 Combined with water quality improvements from the
15 sand filters previously described, the negligible permanent
16 loss of toad habitat in the coastal zone is offset by
17 improvements that will encourage its long term permanent use
18 of the coastal zone.

19 The California gnatcatcher has long been the
20 flagship species of Southern California conservation
21 planning. The importance of protecting the gnatcatcher and
22 coastal sage scrub habitat is a central part of the project's
23 overall mitigation package. That is why the TCA took a
24 leadership role in purchasing and permanently protecting the
25 1182-acre upper Chiquita Canyon Conservation Area 10 years

1 ago. Although, it is outside of the coastal zone, this
2 conservation area has been identified as the key location by
3 the U.S. Fish and Wildlife Service for gnatcatchers in its
4 sub-region NCCP plan.

5 The most recent survey shows 64 pairs of birds
6 occupying the area, and those bird watchers at the Sea and
7 Sage Audubon web site, quote, called Chicquita Canyon, it is
8 believed to be the most densely populated California
9 gnatcatcher habitat anywhere. If the TCA had not protected
10 this property, in perpetuity, it would have ended up as a
11 golf course, a country club, and surrounding homes.

12 There will be coastal sage scrub impacts because
13 of the project; however, most of these impacts will be
14 temporary in nature, with on-site slope restoration.

15 And, on top of this mitigation, the TCA has
16 recommended that \$10 million of the \$100 million offered to
17 Parks for improvements, be earmarked for the restoration of
18 the 150-acres of coastal sage scrub in Crystal Cove State
19 Park, subject to Park's approval. Taken together, these
20 conservation measures more than offset the amount of loss of
21 coastal sage scrub, at approximately at 3.5:1 ratio.

22 Regarding the tide water goby, and southern
23 steelhead, impacts to these species have been minimized by
24 extensive bridging over San Mateo and San Onofre Creeks. The
25 project will have no impacts on the upstream movement of

1 fish. The assertion of opponents that construction
2 activities within fish habitat would be catastrophic is
3 unsupported by measured evaluation of the evidence, including
4 obvious improvements to water quality. The assertion is also
5 contrary to the opinions of the U.S. Fish and Wildlife
6 Service, and the National Marine Fisheries Service.

7 And, I would like to bring your attention to the
8 May 23, 2007 letter by the National Marine Fisheries Service,
9 which concluded that the project would not adversely affect,
10 or modify critical habitat for the species. Regrettably,
11 staff neglected to inform you of that letter.

12 In conclusion the data shows that the Pacific
13 pocket mouse are not found within the project's footprint, or
14 the coastal zone, and therefore there are no impacts to mice
15 habitat.

16 There are no population level impact to other
17 species, because the impacts are negligible in scale, or
18 because they have been offset by habitat conservation and
19 restoration efforts within the project area, or elsewhere.
20 Long after the Foothill South project is completed, these
21 animals will continue to thrive within the coastal zone
22 because of the plans that TCA has developed and implemented.

23 Thank you.

24 **CHAIR KRUEER:** Thank you, sir.

25 **MR. MARGRO:** Mr. Chairman and Commissioners, I

1 would like to now focus on the TCA's offer of \$100 million
2 that is made in conjunction with this project.

3 You know, in my former role as the general manager
4 of BART in the Bay Area, I am much more accustomed to asking
5 the state for money, and ironically I am now in the position
6 of actually offering the state money -- quite ironic.

7 First, let emphasize that offer is over and above,
8 and beyond the funding necessary to mitigation project
9 impacts specific to this extension. We identified three
10 broad categories of benefits for the \$100 million: extending
11 the lease for San Onofre State Beach, building new
12 campgrounds in existing State Parks in coastal Southern
13 California, or adding even more wildlife habitat than
14 required for the project -- that is our suggested menu of
15 opportunities, if you will -- but, the TCA understands that
16 there are substantial opportunity throughout the entire state
17 where these funds could be helpful.

18 We know that some of the \$100 million could be
19 used to enhance public access along the coast line, or to
20 build trails. We look to this Commission, to State Parks,
21 and to the Resources Agency to work with us to decide how
22 this unique offer could benefit all of California.

23 With regard to coastal access, please remember the
24 toll road system connects to the Inland Empire, one of the
25 most affordable areas of our state. For young families from

1 Riverside or Corona, a day at the beach involves a battle
2 with traffic that often deters them from even attempting to
3 visit the coast. With the opening of the 241 extension,
4 access from the Inland Empire will be enhanced.

5 Mr. Chairman, let me now introduce Steven Kaufmann
6 to explain why the balancing provision of the Coastal Act
7 should be applied to approve our project.

8 **MR. KAUFMANN:** Thank you, Mr. Chairman, Steven
9 Kaufmann, for TCA.

10 Commission staff has strenuously asserted that the
11 balancing provision in Section 30007.5 can't be used to
12 approve this project, yet, in fact, the Commission has
13 repeated used balancing to approve new regional transport-
14 ation projects under circumstances similar to those presented
15 here.

16 Let me give you some examples of similar
17 transportation projects that received Commission approve
18 using balancing, to help you recall how you have exercised
19 your discretion in the past, to approve consistency
20 certifications and CDPs -- actually, you may find it easier
21 to read the quotes from the last four pages of the slide
22 handout we provided you.

23 For example, despite wetland and ESHA impacts, for
24 State Route 73 TCA toll road, the Commission found the
25 project most protective of coastal resources, because it

1 facilitated access to the coast, and upland recreation areas.

2 And, despite the impacts to wetlands, and
3 sensitive upland plants, the Commission approved the middle
4 segment of State Route 56 as being most protective of coastal
5 resources because it improved water quality, and reduced
6 travel time for inland residents to reach the coast.

7 And, you approved the North County Transit
8 District's double tracking project on Camp Pendleton, and
9 exercised your discretion by finding the public access
10 benefits offset the wetland and ESHA impacts, and you
11 emphasized the traffic congestion interferes with access and
12 to coastal recreation areas in north San Diego County.

13 And, just last year you approved the district's
14 passing track extension process by balancing exactly the same
15 reasons.

16 And, finally, you approved a bridge replacement
17 where Old Topanga Canyon Road crosses Red Rock Creek in Los
18 Angeles County, balancing public safety over ESHA impacts,
19 despite the bridge's placement in ESHA, and the loss of a
20 roost for 300 Mexican three-tailed bats. And, you sited that
21 roadway as a crucial link in this area of the Santa Monica
22 Mountains, and the need to insure access for residents and
23 emergency vehicles to avoid a hazardous condition in an area
24 prone to fires.

25 We have here, as well, a classic case for

1 balancing, balancing in favor of the four Coastal Act
2 policies that promote public access, lower-cost visitor-
3 serving recreational uses, water quality, and public safety.

4 Let me summarize, again, the coastal access
5 benefits by which we suggest balancing against the impacts of
6 the project.

7 First, is public access to San Onofre State Beach.
8 In its 1997 mitigation assessment of the project, State
9 Parks, itself, explained that the project, and I quote:

10 "Will provide greater access to the coast,
11 and substantially increase park visitation
12 levels."

13 Public access to coastal resource is, of course,
14 one of the highest Coastal Act priorities, and one of the
15 prime reasons why the voters passed Prop. 20, and this
16 project will facilitate access to many coastal recreation
17 destination points from Crystal Cove to San Diego.

18 Staff says we haven't quantified the benefit, but
19 in your North County Transit District decisions, you had no
20 difficulty including the obvious; traffic congestion in this
21 area interferes with coastal access, and that access impacts
22 are only going to worsen.

23 And, similarly, in approving the CalTrans I-5
24 bridge stabilization project right in San Mateo Creek, you
25 explain disruption of service on the I-5 would have a

1 significant impact on coastal access. There is simply no
2 reason you can't conclude the same for this project.

3 Second, as Mr. Margro explained, the \$100 million
4 State Parks package will facilitate extraordinary access and
5 affordable recreation at State Parks, in the coastal zone
6 portion of the State Parks system, significantly over and
7 above any balancing offsets provided in previously approved
8 Commission approved transportation projects. And, we have
9 provided condition language that requires the State Parks
10 Improvement Plan that will come back directly to your
11 Commission for public hearing and approval to refine the uses
12 to which the funds would be put.

13 Third, as Mr. Taylor explained, this project will
14 provide a state-of-the-art water quality treatment system,
15 resulting in a net benefit to water quality within the
16 coastal zone. The fact of the matter is that despite the
17 opponents assertions to the contrary, CalTrans has no
18 strategy and no funding for these improvements, and they
19 won't occur without this project.

20 Finally, this project will provide extraordinary
21 public safety benefits by providing an alternative major
22 evacuation route for nuclear plant area residents, the
23 public, and coastal recreation users during the wild fire, or
24 flood by tsunami, and it will enhance fire protection and
25 increase accessibility for emergency vehicles, all consistent

1 with Coastal Act Section 30253, precisely how you applied it
2 in that Topanga Canyon bridge replacement project.

3 Common sense dictates that you apply it here to
4 balance the need for an alternative evacuation route, with
5 resource protection policies, the need for which was so
6 clearly demonstrated in the recent wildfires in San Diego.

7 Commissioners, just as you have in the past, you
8 have the discretion to approve this project by balancing in
9 favor of any one, any combination, or all of these policies:
10 public access, lower-cost visitor-serving recreational uses,
11 water quality, and public safety, and for that reason we
12 respectfully submit the consistency certification should be
13 approved.

14 Thank you.

15 Mr. Margro will conclude our presentation.

16 **MR. MARGRO:** Mr. Chairman and Commissioners, I
17 will conclude.

18 The TCA has built three major toll roads, one is
19 partially in the coastal zone, the other two in parts of
20 Orange County where environmental challenges were
21 significant. Those projects received scrutiny from state and
22 federal regulatory agencies, and from private organizations
23 like the Sierra Club, NRDC, and the Audubon Society. In the
24 end, the roads were built to meet the demanding standards of
25 the law.

1 Commissioners, the TCA has a track record of
2 success. Our board members are elected officials ultimately
3 answerable to the people for their actions. The TCA has
4 demonstrated that it has the ability to plan and build
5 responsibly, carefully, and successfully.

6 Today, we are asking you to allow the TCA to
7 demonstrate once again that we will create transportation
8 improvements that can successfully coexist with the natural
9 environment, while serving the needs of California families
10 and commerce.

11 Mr. Chairman, that concludes our presentation,
12 thank you.

13 **CHAIR KRUEER:** Thank you, very much, and with that,
14 as we set up earlier, and agreed, this would be the time for
15 the organized opposition.

16 **MR. MARGRO:** Mr. Chair, could be reserve the
17 remaining time for our rebuttal?

18 **CHAIR KRUEER:** Yes, we can reserve the rest of the
19 time for your rebuttal, 16 minutes, that is fine.

20 **MR. MARGRO:** Sixteen and a half, thank you.

21 **CHAIR KRUEER:** Okay.

22 And, with the organized opposition, you can come
23 up in the order you want. Mr. Shriver, you are going to
24 start first?

25 **MR. SHRIVER:** I am.

1 **CHAIR KRUEER:** Okay, go ahead.

2 **MR. SHRIVER:** Thank you, sir.

3 Good afternoon, my name is Bobby Shriver, I am the
4 Chairman of the State Parks Commission. I want to thank you
5 all for your service here. Like you, we are volunteers
6 serving the state, trying to do the right thing in difficult
7 circumstances.

8 My colleague, Carol Hart, will speak to you later.
9 I am here to just -- oh, I might mention, I was appointed to
10 my position by Governor Davis. I was reappointed by Governor
11 Schwarzenegger, and I am the elected chair for four years by
12 our bi-partisan commission.

13 I want to tell you three things that I think are
14 important. No. 1, our commissioner met here in San Clemente
15 2.5 years ago. We had the biggest turnout at that hearing in
16 the 80-year history of the parks commission. The people of
17 Orange County came to see us, then, as they are coming to see
18 you today, to express by a very large margin, I think, their
19 opposition to a road in a park.

20 Second of all, after that meeting, our commission
21 passed, as a unanimous commission, bi-partisan, a resolution
22 opposing this road in the park.

23 Third of all, we join with the Attorney General
24 Bill Lockyer to file a lawsuit opposing this park, which is
25 pending now under CEQA. I came down here to make sure you all

1 know that. We have a letter that we filed with you -- which
2 I hope you got a chance to see, a short one, page and a half,
3 signed again by all of the members of the commission, many of
4 whom are elected officials. In fact, from the Republican
5 party, Acquanetta Warren, with the City of Fontana, is a
6 member of the Republican party. I am an elected official in
7 Santa Monica, but I am a member of the Democratic party.
8 Clint Eastwood, a former mayor of Carmel, has signed this
9 letter, and as well as, Sophia Scherman, the mayor of Elk
10 Grove, California, signed the letter.

11 I am very conscious of you time. I want to,
12 again, thank you for your service -- make any of the
13 commission staff available to you as you address this very
14 difficult question, and ask you to think carefully about the
15 idea of what a park means in the state, and what a park on
16 the ocean means in the state, which I know you have had a
17 distinguished record of protecting the *Coastal Act*.

18 Thank you, very much.

19 **CHAIR KRUEER:** Thank you, Mr. Shriver.

20 [Audience Reaction]

21 Again, hold you applause, please.

22 **MS. GOLDSTEIN:** I am waiting for my Power Point to
23 come up, please.

24 My name is Elizabeth Goldstein, and I am the
25 president of the California State Parks Foundation, and I am

1 here today representing a broad coalition of organizations
2 with millions of members in California to object to the
3 application before you for the Coastal Consistency
4 Certification for the Foothill Transportation Corridor South
5 project.

6 San Onofre State Beach is an extraordinary place.
7 It is 2100 acres with 3.5 miles of beach, including the world
8 famous Trestles, roughly 1200 acres of uplands containing
9 Native American sacred sites, natural preserves and trails.
10 The park shelters 11 endangered and threatened species and it
11 is used by 2.4 million people a year, making it the 5th or
12 6th most heavily used park in the state park system year
13 after year.

14 Since and before California heard a colonial
15 footstep this place was sacred to the Juaneno people and it
16 remains so to today.

17 Sorry, I am not getting slides here, I apologize.

18 It has become layered with a myriad of uses that
19 has made it precious to others, as well, whether they are
20 naturalists, surfers, historic preservationists, or just
21 folks who care about the amazing geography that makes
22 California unique.

23 This park and its campgrounds provide an
24 increasing scarce low-cost visitor-serving recreation to many
25 Californians who cannot afford to pay \$200 a night to stay in

1 a hotel.

2 According to the city project, the vast majority
3 of campers come from counties traditionally underserved for
4 parks, and disproportionately people of color, poverty,
5 elevated levels of childhood obesity. Key communities in
6 these counties that campers come from include Los Angeles,
7 Downey, Torrance, Riverside, Ontario and Indio. We thank
8 Robert Garcia of the city project, in the green, for sharing
9 this compelling information with us.

10 I am sorry, can't get a handle on this.

11 This is their map which shows where campers come
12 from, and it was produced by the city project, and the green
13 info network, and we thank him for sharing this information.
14 He is going to speak more in depth about it momentarily.

15 The San Mateo Campground is so popular that on
16 July, 2008, reservations -- which went on sale in January --
17 are now sold out.

18 Today, before you, you have a decision that will
19 influence whether generations of future Californians will
20 continue to have access to this unique state park for
21 contemplation, recreation, and education.

22 Forty years ago, when this park was created by
23 President Nixon, then Governor Ronald Reagan released an
24 official statement, that said in part:

25 "This expanse of acreage, the San Onofre Bluff

1 State Park, now has its future guaranteed
2 as an official state park."

3 His intent was codified in California law, which
4 provides that Camp Pendleton Marine Base, if no longer
5 needed, it will be a state park. Additional state law
6 provides that Camp Pendleton shall be used solely for park
7 and recreation purposes.

8 Fifteen years after this park was formed, the
9 Transportation Corridor Agency was founded, and ever since
10 the State Department of Parks and Recreation has repeatedly
11 objected to the routing of this toll road through San Onofre.

12 In 1984, the general plan for San Onofre was
13 approved. Ironically, it contains the plans for more than 400
14 additional camp sites that lie directly in the path, or
15 adjacent to the toll road, according to State Parks.

16 In the mid 1990s the department stated its
17 objections to this toll road. In 1999, former Director Rusty
18 Areias, stated his objections to this toll road. Prior to
19 that, when he was an Assemblymember, he stated his objections
20 to this road. And, in 2004, the Department of Parks and
21 Recreation again stated its objections to this road, this
22 toll road through San Onofre State Beach.

23 In 2005, as Bobby Shriver has indicated, the Park
24 and Recreation Commission passed a resolution calling for
25 this park to be protected by all state agencies throughout

1 California. The Park and Recreation Commission is now
2 represented by the Attorney General in its lawsuit to stop
3 this road.

4 In 2006, the department again voiced its
5 objections to this toll road, and this one I am going to read
6 out loud to you, because it speaks to something that Mr.
7 Margro mentioned before:

8 "It does not take an expert to understand
9 that locating a multi-laned highway
10 within a few hundred feet of a secluded
11 campground will so destroy the recreational
12 value of that campground, and its sense
13 of place, as to render it valueless."

14 Again, in January 2006, four former directors of
15 the department under prior governors, wrote to Governor
16 Schwarzenegger saying that parks are not set aside to be
17 future highway corridors.

18 Now, it is up to your Commission to protect this
19 park. It is what we believe the law requires, and what the
20 people of Orange County and the state want.

21 A bipartisan poll revealed that 70 percent of the
22 Orange County residents oppose this toll road when they
23 learned that it is going through a state park. Protection of
24 this park is important for San Onofre and all other state
25 parks that are being eyed for infrastructure development and

1 expansion.

2 If this toll road is permitted to proceed, we will
3 be spending decades in rooms like this all across the state,
4 fighting to protect yet another special place. Please help
5 us draw the line.

6 Today, is Ronald Reagan's birthday. For the sake
7 of his state parks legacy San Onofre must be protected for
8 all of us to contemplate, recreate, and educate ourselves and
9 our future generations.

10 Thank you.

11 **MR. BURKLAND:** Good afternoon, my name is James
12 Burklands. I am a senior project attorney at the Natural
13 Resources Defense Counsel. I am here today to talk about the
14 project's legal violations, and as I go through them, it will
15 become abundantly clear that running a multi-lane toll road
16 over 4 miles through a state park is exactly the type of
17 project that the *Coastal Act* was designed to prevent.

18 The Foothill South violates numerous provisions
19 under the *Coastal Act* in virtually every research category,
20 and each one of those inconsistencies is a separate basis for
21 objecting to the certification.

22 I'll briefly discuss the major violations, as
23 follows. First, the toll road unquestionably impacts ESHA,
24 and TCA does not even deny this. According to Coastal
25 Commission staff, approximately 50 acres of ESHA would be

1 permanently degraded or lost, and the Coastal Act strictly
2 prohibits the destruction of ESHA unless the project
3 qualifies as a resource dependent use. There is no allowance
4 for mitigation.

5 TCA does not even argue that the toll road
6 qualifies as a dependent use because it can't. This is a
7 regional transportation project. The project's violations in
8 the destruction of ESHA are absolutely fatal to its
9 consistency certification.

10 Park resources and public access to the coast are
11 also protected by a number of different policies under the
12 Coastal Act. TCA has consistently denied the severe impacts
13 this toll road would have to the park, but the State Parks
14 Department has repeatedly documented over the past decade
15 that if this project goes forward, likely, close to 60
16 percent of the park will likely be abandoned, including San
17 Mateo Campground. As the Commission knows, this campground
18 has special significance, because it was set aside as public
19 access mitigation.

20 Next, as with ESHA, TCA concedes that their
21 project will impact wetlands, although the agency's estimates
22 of impacts varies, Commission staff has determined that the
23 TCA's wetlands delineation still is incomplete. But,
24 regardless of scope, the Coastal Act prohibits the
25 destruction of wetlands, unless the project qualifies as an

1 allowable use.

2 Here TCA is arguing the project is an incidental
3 service public use, but that is clearly not the case. First,
4 the project isn't incidental to anything. It is its own
5 regional transportation highway project. And, second, as
6 Commission staff noted, both the courts and the Commission
7 have determined that new roads cannot qualify as incidental
8 public service uses.

9 Next, the toll road will also cause massive
10 changes to the hydrology of the watersheds that feeds
11 Trestles Beach. It will cut and fill 530 acres, and pave
12 over 4 miles of one of the healthiest watersheds in Southern
13 California. As our experts will attest, TCA's proposed
14 mitigation is inadequate, and the resultant impacts will
15 likely be irreversible, and they further, quote, expect that
16 the surf break will be substantially degraded over time.

17 The state Historic Preservation Officer has
18 identified numerous archaeological and paleontological
19 resources that would be impacted by the toll road, and this
20 includes the historic village of Panhe, and an ancient burial
21 ground that is still used by Native Americans today for
22 sacred ceremonial purposes.

23 And, finally, the Foothill South, running a toll
24 road through a park is a paradigm case of a project that is
25 incompatible with its surrounding area, in violation of the

1 Coastal Act. None of these violations can be cured, let
2 alone all of them.

3 The Coastal Commission staff got it exactly right
4 when it concluded that, and I quote:

5 "No measures exist that would enable the
6 proposed alignment to be found consistent
7 with the Coastal Act."

8 TCA recognizes this and asks the Commission to
9 invoke its balancing authority, but balancing doesn't apply,
10 and we will talk about that next.

11 Thank you.

12 MR. FAUST: Good afternoon, Mr. Chairman, it is
13 good to see you all again. My name is Ralph Faust, and as
14 most of you know I was for a little more than 20 years --

15 EXECUTIVE DIRECTOR DOUGLAS: You want to pull your
16 mike down, please, so you can get closer to it.

17 MR. FAUST: Down? you are not recording?

18 EXECUTIVE DIRECTOR DOUGLAS: I know this is your
19 first appearance here.

20 MR. FAUST: It is, is that better?

21 CHAIR KRUEER: No, just a minute, please.

22 [Pause in proceedings.]

23 There it is back on again, thank you. Sorry Mr.
24 Faust.

25 MR. FAUST: Thank you, Mr. Chairman, I'll begin

1 again. My name is Ralph Faust. As most of you know, I was
2 chief counsel to this Commission for a little more than 20
3 years.

4 I appear before you today on behalf of the
5 California State Parks Foundation. The foundation asked me
6 to review the arguments that were put forth by TCA in support
7 of the approval of its project using balancing, and to review
8 the Commission decisions that they cited in support of those
9 arguments. I have also reviewed TCA's new submittal, the one
10 that came out, apparently, yesterday.

11 Let me just say quickly on that, that it adds
12 nothing new in terms of either legal theory or precedent. It
13 does not change my analysis in any way.

14 In summary, this project may have greater
15 inconsistencies with Chapter 3 policies than any project ever
16 proposed to this Commission that was not covered by the
17 specific special policies of the core provisions, or of the
18 coastal dependent industrial provisions of the law.

19 There is no legal or factual basis to approve this
20 project because it does not present any true conflicts, and
21 even if there was a conflict, it is denial of this project
22 that is most protective of coastal resources.

23 As the Court of Appeal instructed in the Bolsa
24 Chica case, for a conflict to exist, there must be a policy
25 or interest in the Coastal Act which directly conflicts with

1 the application with another policy or interest of the Act.

2 The Commission cannot legally balance just
3 anything. There are boundaries to this. The boundaries of
4 the Commission's ability to find a conflict between policies
5 are defined by the essential nature of the project -- what is
6 the project all about? -- and by the limits of the
7 Commission's jurisdiction to act in that area.

8 If a proposed benefit is not part of the essential
9 nature of the project, it does not create a conflict. The
10 Commission stated this principle quite clearly in its recent
11 Tilch decision, and I want to read a quote from that, because
12 I think it is very pertinent to this, quote:

13 "The benefits of a project must be inherent
14 in the essential nature of the project.
15 If the rule were to be otherwise, project
16 proponents could regularly create conflicts,
17 and then demand balancing of harms and
18 benefits simply by offering unrelated carrots,
19 in association with otherwise unapproveable
20 projects. The balancing provisions of the
21 Coastal Act could not have been intended
22 to foster such an artificial and
23 manipulatable process."

24 End quote.

25 With this in mind, let's quickly look at the

1 arguments advanced for approval through balancing. Treating
2 runoff from Interstate 5, whether or not it has water quality
3 benefits, is unrelated to this project. It is a carrot, and
4 it provides no basis for approval through conflict
5 resolution. None, none of the cases cited by TCA support
6 balancing on this basis.

7 Offers of money does not create a conflict. Can't
8 say this anymore clearly, you can't buy compliance with the
9 Coastal Act. This may be the ultimate carrot, but it is
10 still just a carrot.

11 Finally, easing traffic congestion in inland
12 Orange County, or in Riverside County, or in San Bernardino
13 County, does not create a conflict that can be resolved by
14 approving this toll road. There is no evidence that
15 recreational users will benefit, but even if some did, the
16 benefits are incidental to this project, they are not the
17 essential purpose of the project. Consequently, balancing on
18 this basis is beyond the scope of the Chapter 3 policies.

19 As I discussed at length in a memo that I
20 submitted to you, the cases cited by TCA do not support
21 balancing on this basis.

22 Let me focus specifically on the Commission's
23 approval of State Route 73, which is the only decision cited
24 by TCA that has actually approved a project based upon
25 balancing of access benefits. In that case, the Commission

1 approved the project based upon alleviation of traffic
2 congestion, but the traffic congestion in that case was on
3 Pacific Coast Highway, the main artery of the coastal zone in
4 that area. The alternative of not approving the project
5 would have caused impacts on and adjacent to PCH in the
6 coastal zone, thus in that case, the Commission's approval
7 was a reasonable extension of the access policies of the
8 *Coastal Act*.

9 The essential purpose of this toll road project is
10 the alleviation of traffic congestion outside of the coastal
11 zone, far removed from any reasonable interpretation of the
12 access policies of the Act.

13 In conclusion, there is no basis in fact or law to
14 approve this project using conflict resolution. There is no
15 conflict within the scope of any Commission or judicial
16 precedent regarding the use of conflict resolution, so there
17 is no conflict to be balanced because the project is
18 inconsistent with the *Coastal Act* and does not present a
19 conflict, and the consistency certification must be denied.

20 I will be available for questions, or a longer
21 discussion at the Commission's pleasure. Thank you, very
22 much, it is really good to see all of you again.

23 **CHAIR KRUER:** Nice to see you, Mr. Faust.

24 Mr. White.

25 **MR. B. WHITE:** Good afternoon, Chair, my name is

1 Bill White. I am an attorney with the firm of Shoop Mahally
2 and Weinberger.

3 As you just heard, the proposed toll road is
4 inconsistent with virtually every resource protection policy
5 of the Coastal Act. The sheer volume and extent of these
6 violations make this one of the most harmful projects for the
7 coast that the Commission has seen in a generation, and
8 impossible to reconcile with the policies of the Act.

9 TCA's response to this obvious truth has been to
10 spread a series of legal and factual untruths designed to
11 scare the public and win the approval of the Commission and
12 other decision makers. There are many of these, but I want
13 to mention just three right now.

14 The first is the claim that we heard this morning
15 that there would be no water quality impacts from this
16 project, none whatsoever. I have a letter that was just
17 released today by the California Regional Water Quality
18 Control Board, and I am just going to quote it here, and it
19 says:

20 "As currently proposed, the project does
21 not meet water quality standards, and
22 therefore would not warrant certification."

23 You are going to hear more detail about water
24 quality impacts in a moment.

25 The second is TCA's claim that the toll road is

1 needed to keep San Onofre State Beach open. According to TCA
2 without its \$100 million offer, the state will be unable to
3 afford to renew its lease with the Navy when it expires in
4 the year 2021. This is a theory that we need to destroy the
5 park to save it. The problem with this theory is that it is
6 utter nonsense. There are numerous provisions in federal law
7 which authorizes the Navy to enter into a public benefit
8 lease for parks and conservation at no costs, or to accept
9 in-kind maintenance and management expenditures in lieu of
10 rent, which for San Onofre are likely to far exceed even TCAs
11 own estimates of the lease value over the next 50 years.

12 TCA's proposed cash payment is nothing more than a
13 cash payment. It is not needed to keep the beach open. It
14 will not create any new coastal park land. It will not
15 result in any new camp sites that are not already planned.
16 It is simply not mitigation for this project. What TCA is
17 seeking is permission to violate the law by writing a check.
18 The precedent this would set is unthinkable. The Commission
19 should resist this maneuver and uphold the Coastal Act.

20 The other significant myth put forward by TCA is
21 that the toll road is the only feasible way to obtain
22 congestion relief in southern Orange County. This is based
23 upon TCA's assertion that fixing the I-5, which is the
24 obvious alternative here, will cause hundreds of displace-
25 ments of homes and businesses. These numbers have absolutely

1 no basis in reality. As you will hear in the presentation by
2 Lucy Gibson of Smart Mobility, about 95 percent of the
3 alleged displacements can be avoided through smart design,
4 and two of the nation's leading highway engineers agree that
5 those designs make sense.

6 TCA says today that federal and state agencies
7 have all agreed that fixing the I-5 is not feasible. This is
8 simply untrue. The federal EIS for this project is not even
9 complete, and just recently, just a few days ago, the U.S.
10 EPA came out with a letter to the Federal Highways
11 Administration calling for a full evaluation of the AIP
12 alternative, which we describe in the Smart Mobility report..

13 The EPA letter states, and I quote:

14 "The Smart Mobility Report addresses the
15 feasibility of a modified AIP, and specifically
16 rebuts many of the engineering design and
17 displacement assumptions in the TCA's EIR."

18 So, why is TCA so afraid of the AIP alternative?
19 Because it undermines all of the TCA's rationale as to why
20 the toll road should be approved, despite its inconsistency
21 with the *Coastal Act*.

22 Fixing the I-5 provides all of the traffic
23 benefits of the toll road, and it would retrofit 15 miles of
24 the I-5 with storm water runoff treatment. That is more than
25 7 times what the toll road proposes to add, and that is all

1 without impacting the park, destroying ESHA, cutting a gash
2 through the San Mateo watershed, threatening Trestles,
3 creating a new fire hazard, or running right through a sacred
4 site.

5 Put simply, the toll road cannot, by any stretch
6 of the imagination, be considered the alternative most
7 protective of coastal resources. And, for this reason, among
8 others, TCA cannot rely on the balancing provisions of the
9 Coastal Act.

10 We urge the Commission to follow the Coastal Act
11 and reject TCA's certification.

12 Thank you.

13 CHAIR KRUEER: Thank you, Mr. White.

14 Michael White.

15 MR. M. WHITE: My name is Michael White. I am an
16 ecologist with the Conservation Biology Institute.

17 Coastal California is recognized as a global
18 diversity hot spot, supporting many species found no where
19 else on earth.

20 The south coast region is one of the most unique
21 and diverse portions of this hot spot, but we have lost,
22 virtually, all of the habitats in the coastal zone through
23 development.

24 This slide shows a map of the south region. Red
25 is development, yellow is agriculture, and the green is the

1 remaining open space. As you can see, we have destroyed
2 virtually all of the natural resources in the coastal portion
3 of Southern California, and the most significant block of
4 habitats remaining in coastal California is here in the San
5 Mateo and San Onofre Creek watersheds. This is what is at
6 stake in your decision today.

7 Zooming in more closely, the coastal zone of the
8 project area is characterized by a diverse mosaic of coastal
9 wetlands, coastal sage scrub. In this complex of high
10 quality habitat supported by intact ecosystems processes such
11 as natural flooding and sediment regimes, and represents an
12 irreplaceable remnant of the incredible biodiversity for
13 which California is known.

14 As a testament to its quality, this area supports
15 at least 11 threatened or endangered species, thus the
16 project area clearly qualifies as an environmentally
17 sensitive habitat area, or ESHA. In fact, given the high
18 quality, and the diversity of its resources, and the dramatic
19 loss of resources elsewhere in coastal Southern California,
20 it can legitimately be considered a super ESHA.

21 We should be doing everything in our power to
22 protect these last meaningful natural areas, and the toll
23 road would irretrievably degrade these resources with impacts
24 that cannot be mitigated.

25 The TCA has consistently misrepresented the true

1 value of these resources, rather than looking at the ESHA
2 complex as a whole, their impact analysis and mitigation has
3 piecemealed and is biologically indefensible.

4 Concerning wetlands, the TCA has consistently
5 underestimated the direct and indirect impacts to the toll
6 road on wetland habitat, and has proposed insufficient
7 mitigation to reduce these impacts to a level of
8 insignificance. Rather, the intact coastal complex of
9 habitats will suffer an irreplaceable net loss of wetlands
10 functions and values as the result of the project.

11 The TCA claims that impacted coastal sage scrub in
12 the coastal zone is degraded and largely unsuitable for the
13 threatened gnatcatcher; however, a site visit in January
14 documented excellent quality habitat with gnatcatchers
15 exactly where the TCA predicted they would not occur. The 32
16 acres of coastal habitat impacted by the project cannot be
17 replaced by a site 15 miles inland, and what little
18 restoration remains for Crystal Cove will occur absent the
19 TCA actions.

20 The critically endangered Pacific pocket mouse,
21 one of the rarest mammals in the world, is found at only four
22 remaining locations. I just have to say that the findings of
23 Dr. Ramey are disputed by a number of other experts, and
24 according to Dr. Spencer, who has worked extensively on this
25 species in the project area, the toll road would increase the

1 of extirpation of one of the four remaining pocket mouse
2 populations, and it is just not consistent with the recovery
3 plan of the U.S. Fish and Wildlife has put together for the
4 species.

5 And, it is also worth noting, that while the
6 adaptive management is the way to proceed with managing these
7 resources, adaptive management requires the ability to modify
8 our actions. Once the toll road is in, it cannot be taken
9 out.

10 The TCA asserts that there are not endangered
11 arroyo toads in the coastal zone, but as shown on this map,
12 their EIR-EIS contradicts this and documents substantial
13 impacts to the species. The toll road will impact 40 acres
14 of arroyo toad habitat in the coastal zone, and according to
15 an expert on the toad, the toll road will irreversibly
16 fragment the arroyo toad populations in and outside of the
17 coastal zone.

18 As you can see, the TCA has misrepresented and
19 downplayed the real consequences of the toll road; however,
20 it is indisputable that the ESHA lost to the project
21 represents some of the rarest and finest habitats remaining
22 in Southern California. These resources should be afforded
23 the highest level of protection possible, and the proposed
24 project is simply not consistent with their protection.

25 Thank you.

1 **CHAIR KRUEER:** Mark Lindley.

2 **MR. LINDLEY:** Hello, I am Mark Lindley, from
3 Philips Williams and Associates. We are recognized leaders
4 in the field of environmental hydrology. We have over 30
5 years of experience in California, working with storm water
6 management, water quality treatment, and coastal processes.

7 If I can get these slides to come up, oh, here we
8 go.

9 Okay, I am here to explain why the proposed toll
10 road will cause water quality problems in San Mateo Creek,
11 and could affect the Trestles surf break.

12 San Mateo, and Cristianitos Creeks water sheds are
13 among the last remaining undeveloped watersheds along the
14 south coast. The proposed toll road would pass through very
15 rugged terrain in the steepest portions of these watersheds.
16 These areas have highly erosive soils, that are extremely
17 sensitive to development, with drainage channels that are
18 prone to instability.

19 As an example of what could happen with the
20 proposed toll road, this area here that I am showing, shows a
21 couple of ball fields and a road that are located at the top
22 of a sub-watershed in Cristianitos Creek. As a result of
23 that small amount of development, this channel that you see
24 scarred through the existing hillside has scoured
25 significantly.

1 This is an example of some riprap energy
2 dissipater at the outfall of this culvert. You can see, at
3 the end of the riprap dissipater, the channel erosion
4 continues on down stream. These impacts are from only a
5 small development. Ball fields and a road. Imagine the
6 potential impacts from a 4 to 6-lane highway.

7 Now, I would like to speak to a couple of the
8 serious problems associated with the TCA's runoff management
9 plan. The large purple area you see in this figure are cut
10 and fill slopes. These slopes are as wide as 700 to 800 feet
11 -- that is a couple of football fields. There are as high as
12 250 feet -- that is about a 20-story building. To help you
13 appreciate the scale of the size of these cut and fill
14 slopes, the large purple areas are the largest cut and fill
15 slopes, and if you look over to the right, the smallest
16 areas, those are more typical of cut and fill slopes you see
17 along I-5 right now.

18 If TCA proposes to stabilize these steep 3:1
19 slopes with revegetation, through hydro-seeding, and also
20 soil binders, however, these efforts in such steep areas have
21 consistently failed elsewhere, and would likely fail here,
22 especially with the limited rainfall that we receive, and the
23 topsoil removed from the cut slopes.

24 For example, a 35-acre area statewide through
25 revegetation in the San Juan Hills, the TCA experienced slope

1 failures with erosional cuts up to 10-feet deep. By
2 comparison, with this project, the TCA is proposing to
3 revegetation 530 acres of cut and fill slopes for the toll
4 road. We would expect considerable soil erosion from these
5 cut slopes.

6 Now, the runoff from these slopes is going to be
7 discharged directly to existing drainage channels without any
8 treatment, so any eroded soils from these slopes are going to
9 go right straight into San Mateo Creek.

10 Highway runoff is going to be routed passed
11 numerous small drainage channels and treated in sand filters
12 and detention basins. The discharge from the sand filters
13 and detention basins are going to go into a couple of -- just
14 a few of the many drainage channels along the San Mateo Creek
15 watershed, which could lead to impacts, the increased runoff
16 discharged to those few channels could lead to impacts
17 similar to the channels I just showed.

18 In addition, they are proposing sand filters for
19 areas up to 65 acres, yet CalTrans standards recommend use of
20 sand filters only on small parking lots, due to maintenance
21 issues, that they encountered in their recent studies. The
22 use of sand filters is inappropriate here. Contrary to the
23 TCA claims, sand filters in detention basins only trap a
24 small portion of -- or I should say a portion of the sediment
25 pollutants washed from the toll road.

1 The likely outcomes from this project include
2 increased sediment delivery from eroded cut and fill slopes,
3 and destabilized channels. We would expect failure of the
4 sand filters discharging pollution down stream. The TCA
5 claim that there would be no increase in sediment delivery is
6 simply impossible.

7 What does this mean for the Trestles surf
8 resource? Well, it is no coincidence that it is one of the
9 world's best surfing resources exists at the mouth of one of
10 the last undeveloped watersheds in Southern California. What
11 I would expect is that in San Mateo Creek -- Mr. Skelly was
12 kind enough to point out that nice cobbled bed in the stream
13 -- when these cut and fill slopes erode, that sediment is
14 going to go down towards San Mateo Creek. It is going to
15 create a layer, and could be inches, it could be feet deep in
16 San Mateo Creek, so when that extreme storm hits, that
17 50-year storm that you need to move those cobbles offshore,
18 to support the Trestle surf break, when that storm hits,
19 first it is going to have to erode through that layer of
20 sediment, before it can move its cobbles. Therefore, we
21 believe that delivery of cobble under these rare and extreme
22 storms is going to be effected.

23 Also, offshore, as the increased delivery of
24 sediment fills the voids in the cobble bed, wave action will
25 tend to move and set the cobble offshore.

1 Contrary to Mr. Skelly says, that conclusion is
2 supported by numerous researchers. I have a stack of papers.
3 The one at the top here is from Douglas Inman and Scott
4 Jenkins, from Scripps Institute of Oceanography -- which are
5 two of the researchers that Mr. Skelly named --

6 "Over time we would expect this cobble bed to
7 break down, and there would likely be significant
8 and irreversible impacts to the world famous surf
9 break."

10 I would like to mention just one more point. The
11 man from RBF, I have forgotten his name --

12 **CHAIR KRUER:** Sir, I don't want to interrupt you,
13 but you have got quite a few speakers left for your hour, and
14 you can use it, but you will have some sad people behind you.

15 **MR. LINDLEY:** Okay, my last point would be that
16 the regional board just rejected the state-of-the-art storm
17 water management plan for the third time.

18 **CHAIR KRUER:** Thank you, sir.

19 **MS. GIBSON:** I am Lucy Gibson. I am with Smart
20 Mobility, and I am a traffic engineer licensed in Vermont,
21 and I have consulted on transportation planning and
22 engineering projects all around the U.S. including New York
23 City, Washington D.C., Chicago, Seattle, Denver and San
24 Diego.

25 Our role was to look at alternatives for the toll

1 roads, specifically the AIP alternative. It is important to
2 consider that TCA, itself, found that the AIP alternative was
3 more effective at reducing traffic congestion, and it was
4 rejected only because of TCA's high number of estimated
5 displacements. These can largely be avoided by using common
6 highway engineering techniques. The AIP alternative is a
7 combination of HOV and auxiliary lanes on I-5 and arterial
8 improvements. Our work assumes the exact same number of
9 lanes on I-5 as TCA.

10 On the left side of the slide are locations of
11 displacements projected by TCA, and the right shows the
12 reduction and displacements that can be achieved by the
13 design techniques I will be describing. It is worth noting
14 that impacts to hotels reported by TCA can be avoided with
15 these design refinements.

16 Here is one example, in San Clemente along I-5,
17 where TCA reported that homes over 100 feet from the edge of
18 the road would be displaced when widening to the only 28 feet
19 as required. The reason that TCA assumed this is that they
20 create a wide footprint where they would have to regrade all
21 of the slopes and impact the houses.

22 Using retaining wall right at the edge of I-5 you
23 can maintain the existing slopes along the roadsides, and not
24 require displacements of all of the homes and businesses, as
25 reported by TCA.

1 Retaining walls are very common along I-5. This
2 is not a novel technique. I am baffled why they weren't used
3 in the TCA design of the AIP alternative. So, my first
4 conclusion is using retaining wall along I-5 will reduce a
5 vast number of displacements reported by TCA.

6 This is another example, along Oso Parkway, where
7 it shows a high number of displacements from widening the
8 arterial by just 2 lanes.

9 This is a ground level shot, again, retaining
10 walls here could be used. In the lower photograph is along
11 Crown Valley Parkway very nearby where the City of Mission
12 Viejo has actually used a retaining wall, in a very similar
13 situation, so that they didn't require displacements of
14 roadside development. So, using retaining walls along
15 arterials will also dramatically reduce displacements
16 reported by TCA.

17 This is an example of one of several examples of
18 arterial intersections where TCA assumed grade separation was
19 needed, and resulting in much greater impact than necessary.
20 And, their own traffic studies show that these grade
21 separations are not necessary, so that is a third major tool
22 to reduce displacements of these unnecessary grade
23 separations.

24 TCA used partial cloverleafs in many of their
25 interchanges along I-5, including this one at Ortega Parkway,

1 resulting in massive displacements. On the right is a
2 diamond interchange design recently designed by the City of
3 San Juan Capistrano, that is safe, effective and avoids the
4 displacements.

5 Another example from San Clemente, again, the
6 final solution is that using select and appropriate
7 interchange designs will greatly reduce displacements.

8 So, what we have learned in our work is that TCA
9 prematurely rejected the AIP alternative without ever having
10 gone through some of these basic designs refinements. TCA's
11 claim that the AIP is not feasible is wrong.

12 **CHAIR KRUEER:** Thank you, Ma'am.

13 Mr. Clark.

14 **MR. CLARK:** My name is Philip Clark. I am a
15 professional engineer in New York State, and a staff
16 consultant of Bergman Associates, a planning, engineering,
17 and architectural firm with a total of 10 offices in 4
18 states.

19 For 12 years prior to my retirement in the fall of
20 2006, I was deputy chief engineer and director of design for
21 the New York State Department of Transportation, based in
22 Albany, New York. I was also a member of the American
23 Association of State Highway and Transportation officials
24 technical committee on geometrical design, which authors a
25 Ashtel's [sic.] Policy on geometrical design of highways and

1 streets, the socalled Green Book, and a companion document, A
2 Guide for Achieving Flexibility in Highway Design.

3 Given the complexity of the challenge before TCA,
4 I would have expected TCA to evaluate alternatives in much
5 greater detail before rejecting them; however, the plan for
6 AIP alternative that TCA presented, which reduced congestion,
7 as well as the toll road, and which was subsequently discard-
8 ed without further development and study, left me with a
9 single overall reaction, based up more than 35 years of
10 experience in highway design. If I had been director of
11 TCA's design group, and my staff had presented that
12 alternative to me, I would have sent them back to the drawing
13 board.

14 The plan TCA presented is overly generic, lacks
15 innovation, and does not demonstrate a concern for the built
16 and natural environment.

17 Two of the more important conclusions Bergman
18 Associates reach are displacement of people and business for
19 the AIP alternative can be marketed reduced. Smart Mobility,
20 utilizing representative examples of possible modifications
21 to the AIP alternative, presents a very strong case that
22 there are numerous alternative approaches to the TCA design
23 that have solid potential to greatly reduce the overall
24 right-of-way impacts and costs.

25 Secondly, comparisons between the AIP

1 alternatives, and the toll road alternatives are inconclusive
2 until the studies are complete. Along a highway such as I-5,
3 characterized by heavy development easily adjacent to the
4 highway boundary, a relatively small change in design can
5 have a significant difference on right-of-way impacts.

6 CHAIR KRUE: Mr. Clark.

7 MR. CLARK: Yes.

8 CHAIR KRUE: I don't want to interrupt you, but
9 the Indians were going to get the last 15 minutes of the
10 presentation, so --

11 MR. CLARK: I can conclude in about 20 seconds.

12 CHAIR KRUE: As long as you guys are managing it,
13 you know, and you have Mr. Reynolds up there, too, so okay,
14 no problem, I am just trying to help matters.

15 MR. CLARK: Until TCA undertakes a study which
16 demonstrates innovation and sensitivity to the built and
17 natural environment, their estimates right-of-way impacts to
18 the AIP alternative should be considered invalid, and much
19 greater than necessary.

20 Finally, it is important to understand that the
21 report by Smart Mobility presents concepts, not engineered
22 plans. TCA needs to do the engineered plans. Their intent
23 was to insure that policy makers and decision makers, such as
24 the California Coastal Commission, were aware that there were
25 solid potential for refinements to the AIP alternative that

1 could greatly reduce the right-of-way impacts of the AIP
2 alternative.

3 Thank you.

4 **CHAIR KRUEER:** Thank you, sir.

5 Mr. Reynolds.

6 **MR. REYNOLDS:** Thank you, Mr. Chairman, I am Bill
7 Reynolds of the Natural Resources Defense Council.

8 In reviewing the record for this proceeding, I was
9 struck by what the TCA had to say about the Commission's
10 staff, and its exhaustive 249 page report, and had I time, I
11 was actually going to read some of those harsh words, but I
12 am not going to do that, because I don't have time for that.

13 This Commission, of course, is familiar with the
14 work of its own staff, and you can judge for yourself whether
15 the TCA's harsh charges ring true, or whether -- as it seems
16 to me -- that they have a rather self serving air of
17 desparation about them.

18 But, to consider just a few examples of TCA's own
19 records in this proceedings. They assure you that the
20 project complies with all laws, yet, they went to Congress to
21 get a special exemption precisely to prevent review under
22 California law by this very Commission, or any other state
23 agency. It took a major Legislative effort by representative
24 Susan Davis and Loretta Sanchez this year to eliminate that
25 exemption.

1 The TCA argues that this Commission has no
2 jurisdiction outside of the coastal zone, yet, as all of you
3 know, the *Coastal Zone Management Act* says exactly the
4 opposite, where a project may affect coastal zone resources,
5 as this one clearly does.

6 The TCA says over and over that running a major
7 highway through the heart of this state park won't interfere
8 with its use and enjoyment, yet the State Parks Directors and
9 their staff have, in unequivocal terms, for decades concluded
10 the opposite every time they have reviewed this project.

11 The TCA says the I-5 expansion alternative would
12 take over 1200 homes and businesses, yet, independent
13 consultants have found that 95 percent of those displacements
14 can be avoided with a better design.

15 The TCA says we need to enhance public access to
16 this coastal park, and then with a straight face they argue
17 that the best way to do that is to run a toll road right
18 through the middle of the park, yet, this park already draws
19 2.4 million visitors each year, and California State Parks
20 has estimated that the TCA's alignment would require that up
21 to 60 percent of this park be closed.

22 TCA may point out that California Resources
23 Secretary Mike Chrisman disagrees with that estimate, and in
24 fact in a letter to this Commission now fully endorses the
25 TCA's view of the project, but the silence of our State Parks

1 director is deafening, a responsible state official, whose
2 with her staff and each of her predecessors has long opposed
3 this project.

4 The California State Parks Commission has sued to
5 stop the project. The California Attorney General has sued
6 to stop the project. The California Native American Heritage
7 Commission has sued to stop the project.

8 And, to be honest, I can't imagine that Secretary
9 Chrisman could have been very happy to sign that letter. I
10 feel certain that he agreed to become Resources Secretary in
11 the first place because he loves the natural resources of our
12 state. In fact, I remember when I first met with him about
13 this project in his office several years ago, we showed him a
14 map of the alignment running through the park. He looked up
15 and said, "Is this some kind of a joke?" And, that common
16 sense reaction, I submit, is the correct assessment of this
17 project, under the *California Coastal Act*.

18 Finally, Mr. Chairman, it is often the case that
19 government agencies must first be told, "No" in order to
20 persuade them to do their job right, in compliance with the
21 law. This is true if the agency is the United States Navy
22 training with sonar, and it is true with the agency of TCA
23 building a toll road, there is a better lawful, less
24 destructive and more effective alternative to address our
25 traffic problem, but it will never see the light of day,

1 unless this Commission does its job, unless this Commission
2 enforces the Coastal Act.

3 And, so, Mr. Chairman, it is up to you, and we
4 urge you to act today to affirm the recommendation of your
5 staff and reject the consistency determination.

6 Thank you, very much.

7 **CHAIR KRUEER:** Thank you, sir.

8 **MS. ROBLES:** Honorable Commissioners, my name is
9 Rebecca Robles. I represent the United Coalition to Protect
10 Panhe. We offer this song of the Acjachemen people.

11 [Musical Presentation]

12 My name is Rebecca Robles, and my eldest son
13 currently serves in Iraq, to protect his country. I stand
14 here before you, Commissioners to protect my sacred site in
15 my country. I am fighting in the name of my mother. My
16 mother started this mission of work to protect sacred sites.
17 She spent the last 15 years of her life working to protect
18 sacred sites.

19 I have worked with the Sierra Club, California
20 Cultural Resource Preservation Alliance, and the Alliance to
21 protect Panhe. Our coalition is a group of grass roots
22 people, and a coalition of Native Americans working to
23 preserve these sites, such as Panhe.

24 Panhe is our ancestral village from the mid 1700s,
25 and my ancestors lived there when the first Europeans came.

1 I have participated on numerous ceremonies there, reburials,
2 and we begin our ancestor walk every October. Ninety percent
3 of our ancestral sacred sites in Orange County have been
4 destroyed. I encourage you, I implore you to uphold the
5 Coastal Act. Panhe is one of the remaining sites where we
6 can gather and participate in our culture, and express our
7 spirituality. There is no way that this traditional cultural
8 property can be replaced.

9 A lot of information has been spoken here. I ask
10 you to sift through it. I ask you to hold on to the truth.
11 I ask you to protect this sacred site. I ask you to protect
12 San Mateo. I ask you to protect Panhe, uphold the Coastal
13 Commission Act, thank you.

14 **CHAIR KRUER:** Thank you, very much.

15 **MR. GARCIA:** Good afternoon, thank you very much.
16 My name is Robert Garcia. I am the executive director and
17 counsel of the City Project in Los Angeles, California, and
18 we have focused for many years on equal justice, democracy,
19 and livability for all, helping to create parks and open
20 space in the most under-served communities, and also keeping
21 existing open space open for all.

22 We are very proud and honored to work with the
23 Acjachemen people. The TCA cares more about the pocket mice
24 than about the Acjachemen people. They have spent more time
25 analyzing the impacts of this road on pocket mice than the

1 Acjachemen people, and we appreciate a presentation by the
2 staff, which explicitly points out that the TCA hasn't done
3 anything about the impact on people of the toll road, and the
4 TCA has not considered the alternative of avoidance.

5 We do not speak solely, do not work solely with
6 the Acjachemen people. We are very proud of the diverse and
7 growing alliance that has come together to save Panhe and to
8 save San Onofre, which includes the United Coalition to
9 Protect Panhe, a Native American Alliance, and it also
10 includes Bernard Bruce of Bruce's Beach, whose family resort
11 at the beach was destroyed by Manhattan Beach through eminent
12 domain.

13 The alliance includes Robert Bullard, who many
14 people consider the father of the environmental justice
15 movement, from the Environmental Justice Resource Center at
16 Clark Atlanta University. It includes the National Latino
17 Congresso which explicitly adopted a resolution asking for
18 every federal, local, and state agency to do everything
19 necessary to save Panhe and save San Onofre and stop the toll
20 road. It includes the National Hispanic Environmental
21 Council, Mojeras Latera, San Joaquin Association, and
22 includes 8 other Native American groups throughout
23 California, and the growing national Alliance of Civil Rights
24 Environmental Justice Organizations.

25 And, it is appropriate that this diversity of

1 support exists to save Panhe and save San Onofre, because of
2 the 2.4 million people who visit San Onofre every year, 88
3 percent of the campers to the San Mateo campgrounds come from
4 California. Of those campers, 93 percent come from the
5 counties with the greatest need for open space, measured in
6 terms of childhood obesity -- excuse me -- measured in terms
7 of the fewest acres of parks per thousand residents, and the
8 highest level of childhood obesity, youth, poverty, and
9 people of color.

10 We have mapped out Exhibit 26 in the materials we
11 submitted today, supplementing our January 21 materials.

12 This site has a special meaning to the Acjachemen
13 people. It also has a special meaning to all of the people
14 of California, and the United States. To the Acjachemen it
15 is special because many of them trace their lineage directly
16 to Panhe, a village that is 8,000 years old.

17 It is a sacred site because people are buried
18 there. The ancestors are buried there. It, also, is a living
19 site. It not just an archaeological site with a history. It
20 is where the ancestors walk has started for the past 11
21 years, going Panhe to six or seven other sacred sites nearby.
22 It is where songfest was held last week. It is where they
23 go, the same way if you were going to a church or cathedral
24 or synagogue.

25 But, it is not special just to the Acjachemen

1 people. The first contact between the Spanish explorers and
2 the Catholic missionaries, and the Acjachemen took place at
3 Panhe in 1769. The first baptism in California took place at
4 Panhe. The Acjachemen people built San Jan Capistrano
5 Mission, and I pray that nobody would think to run a toll
6 road through San Juan Capistrano Mission, and it should not
7 run a toll road through Panhe.

8 Coastal Act Section 30244, for the reasons stated
9 in the fact report, would be violated by this toll road.
10 First of all, as the staff has reported, the toll road is,
11 essentially, adjacent to the sacred site. The figures we
12 have seen are within 20 feet of the sacred site. You can't
13 have a sacred site, a ceremonial site, and a cultural site
14 with a sound wall 20 feet away, and a 60-foot highway on the
15 other sound wall.

16 Second, it is the only place where the Acjachemen
17 have an legal agreement with the Marines to practice their
18 religion and their culture.

19 And, third, excavation is not acceptable as a
20 mitigation measure for burial sites, only preservation is.

21 The Acjachemen stand to lose something that nobody
22 else does. The Acjachemen people will lose an ancient
23 village, a current sacred site, spiritual sites, cultural
24 sites, ceremonial sites, and burial grounds -- no one else
25 will.

1 It would violate Section 30244 of the Coastal Act
2 to put a toll road there. It would also violates the laws
3 that provide for equal justice for all. We have outlined
4 those laws extensively in your January 21 comments, Title 6
5 of the Civil Rights Acts of 1964, and the parallel California
6 provisions of the Civil Rights laws. The Acjachemen people
7 would be harmed in ways nobody else would be.

8 With all due respect, this Commission is obligated
9 to apply the equal protections of the law, in addition to the
10 Coastal Act.

11 And, finally, the people of California are
12 entitled to affordable, accessible, recreation. The working
13 poor, low income people, people of color, disproportionately
14 lack the resources to pay for a toll road, to pay the toll on
15 a toll road, either for recreation, or commuting purposes.

16 And, finally, it would set a precedent to run a
17 toll road through a state park. There is already talk about
18 roads and transportation corridors through other existing
19 state parks. We fought for years to create the Los Angeles
20 State Park in a corn field in Los Angeles, and the Los
21 Angeles State Park along the Los Angeles River. There is
22 already talk about running a high speed train through each of
23 those parks.

24 **CHAIR KRUEER:** Mr. Garcia.

25 **MR. GARCIA:** Yes.

1 **CHAIR KRUEER:** There is only, approximately, 4
2 minutes left for the other speakers, too.

3 **MR. GARCIA:** I understand, and the gentleman at
4 the very rear is not with us.

5 **CHAIR KRUEER:** Okay.

6 **MR. GARCIA:** And, we have time to accommodate the
7 other two individuals.

8 **CHAIR KRUEER:** I see, okay.

9 **MR. GARCIA:** Thank you, very much, appreciate your
10 concern.

11 **CHAIR KRUEER:** Just trying to help.

12 **MR. GARCIA:** In Baldwin Hills, we are submitting
13 today a letter from Senator Mark Gridley's comments. We have
14 fought arm in arm with the community in Baldwin Hills to stop
15 a power plant in 2001, stop a garbage dump in 2003, persuade
16 the Governor not to cut off the budget and end that
17 conservancy in 2005, fight oil wells there without an EIR in
18 2007. So, Senator Mark Gridley's comments understand, as
19 well as anybody does, the need to protect park lands, and he
20 is submitting a letter asking you to save Panhe and save San
21 Onofre and stop the toll road.

22 And, finally, as I said earlier, Bernard Bruce,
23 whose family lost everything through imminent domain in
24 Manhattan, the only Black resort where Blacks could go in
25 1920s and '30s has written:

1 "Please don't let what happened to my family
2 and thousands of African American families
3 at Bruce's Beach happen to the Acjachemen
4 people and their sacred site Panhe, and
5 the San Onofre Beach, and the millions of
6 people who are enriched by the natural,
7 cultural, and historic resources located
8 at San Onofre."

9 Thank you, very much.

10 **CHAIR KRUEER:** Thank you, sir.

11 **MS GARCIA:** Hi, my name is Angela Mooney de
12 Garcia. I am policy director for the City Project, and a
13 member of the United Coalition to Protect Panhe, and I am
14 from the Acjachemen Nation Juaneno band of mission Indians.

15 I just want to highlight a couple of points for
16 you here today. One is the word reasonable. All of here in
17 the room have ancestors, all of us have loved ones that have
18 passed. At Panhe, you have ancient burials, you have burials
19 that are 1000's of years old, you also have burials that have
20 been reinterred from other areas, from other development
21 projects that we have not been able to stop.

22 Finally, you have Acjachemen members who have
23 lived within my lifetime who have chosen to have their ashes
24 scattered at Panhe. All of you are human beings, and I urge
25 and implore all of you to be reasonable and to understand us

1 when we say there is no possible way that unearthing our
2 burial grounds, that placing a toll road within 20 feet of
3 our sacred site is reasonable.

4 I am honored to stand with all of my Acjachemen
5 brothers and sisters here today, who have had the courage and
6 tenacity to survive the past 250 years of attempts to destroy
7 us.

8 Please make the right decision today. I thank
9 you.

10 CHAIR KRUEER: Thank you.

11 MR. ALEXANDER: Good afternoon, Commissioners,
12 good afternoon --

13 CHAIR KRUEER: Could you speak into the mike, sir.

14 MR. ALEXANDER: Good afternoon, my name is Lanz
15 Alexander, and I live in Los Angeles. I am a homeowner, a
16 business person, as a matter of fact I run an international
17 operation. I am also on the board of the Southern Christian
18 Leadership Conference, so the home that I own happens to be
19 right next to Baldwin Hills --

20 CHAIR KRUEER: Are you with the organized
21 opposition?

22 MR. ALEXANDER: Yes, I am.

23 CHAIR KRUEER: Yes, sir, go ahead, I didn't see
24 your name.

25 MR. ALEXANDER: Don't worry about it. It is Lanz

1 Alexander, L-a-n-z Alexander.

2 CHAIR KRUEER: In light of you knowing Commissioner
3 Burke, please continue.

4 MR. ALEXANDER: Well, thank you, very much, sir, I
5 appreciate.

6 I am also a cyclist, so when the marathon -- I
7 would be riding in the marathon in Los Angeles.

8 CHAIR KRUEER: No plugs for Commissioner Burke.

9 MR. ALEXANDER: Very good.

10 I also have the fortune to be a grand new
11 grandfather, and I have got to speak for those people who are
12 not here today, and it is truly for my granddaughter that I
13 am trying to make my appeal, because a threat to one park is
14 a threat to all parks.

15 The park that I live next to is in Baldwin Hills.
16 That is a park that has been under siege for a number of
17 years. It has been in siege from encroachment to the
18 community and the developers. It has been in siege from
19 encroachment from the oil wells that have been pumping oil
20 there for a number of years.

21 As I look at this park, we need the green spaces.
22 We must have the green spaces. My granddaughter needs places
23 to play, she needs places to chase butterflies, and she will,
24 hopefully, have the opportunity to go the beach and actually
25 learn how to surf, too.

1 I am also a business person. I compete daily for
2 the best of the best talent on the international basis. I
3 need to make sure I get the best people. It is difficult to
4 run a business here in Southern California because of the
5 cost of living. The cost of living here ends up driving up
6 the cost of all of my talent that I happen to be able to hire,
7 and that is a serious problem for me, and yes, traffic is
8 also a problem.

9 But, let me tell you the one carrot that I happen
10 to have. The carrot that I happen to offer these employees
11 is the quality of life we have in Southern California. What
12 I implore you is to make sure that the quality of life
13 remains the high level that we happen to have.

14 And, I know that the time is running out, but
15 again, for the families and the children and those that
16 aren't here, I want to make sure you guys do the right thing,
17 and preserve the park.

18 Thank you, very much.

19 **CHAIR KRUEER:** Thank you, sir.

20 **MR. COLLINS:** Mr. Chair, members, I am Bill
21 Collins. I represent the League of Conservation Voters of
22 San Diego.

23 Three very quick points that have not been made.
24 First, I would like to --

25 **CHAIR KRUEER:** Wait a minute, wait a minute --

1 **MR. COLLINS:** Yes, sir.

2 **CHAIR KRUER:** -- are you part of the organized
3 opposition?

4 **MR. COLLINS:** League of Conservation Voters, San
5 Diego. I put in my slip.

6 **CHAIR KRUER:** Well, we haven't called you, that is
7 later.

8 **MR. COLLINS:** I'm sorry.

9 **CHAIR KRUER:** Thank you, nice try.

10 And, with that, before we go to elected officials,
11 we are going to -- no, no, we don't, that is after -- we have
12 a whole hearing and then the rebuttal. They get to rebut
13 after the whole hearing.

14 So, we need a 10 minute break here. I am getting
15 a lot of advice here, you know, so.

16 [Recess]

17 **CHAIR KRUER:** Okay, we are ready. Could everyone
18 have a seat, and we will continue the hearing. Is staff
19 ready. Okay, if everyone could be quiet, we are going to
20 continue the hearing.

21 I am going to call on the elected officials now,
22 Senator Marian Bergeson, three minutes, Ma'am.

23 **MS. BERGESON:** Thank you, Mr. Chairman, and
24 members of the Commission. I am Marian Bergeson, former
25 State Senator, and currently a Commissioner on the California

1 Transportation Commission.

2 CHAIR KRUEER: Would you please speak into the
3 microphone, Senator.

4 MS. BERGESON: And, the Commission, of course, is
5 a public agency charged with helping to enhance mobility for
6 all Californians.

7 Right now, the I-5 freeway is the one and only
8 north - south route through south Orange County. Today,
9 126,000 cars pass the San Diego Orange County line using the
10 I-5 freeway, and by 2020 that total will jump by 60 percent
11 to 200,000 cars per day. This traffic increase will inhibit
12 access to the coast for all but those who live in coastal
13 communities.

14 Additionally, our state's economy is reliant on
15 the timely transportation of goods. Should an accident or
16 disaster cause the I-5 to shut down, there is no way for
17 goods to get through, not to mention the commuters who use
18 that, and would be stuck in traffic.

19 The point is, today, there are no alternatives to
20 the I-5, and as a State Transportation Commissioner, I can
21 tell you that transportation alternatives are a necessity.

22 While it is true that State Highway 41 would enter
23 into a small portion of the coastal zone, in order to connect
24 to the I-5 freeway, it is also true that special care has
25 gone into the design of the bridges to minimize impacts to

1 wetlands in environmentally sensitive areas.

2 Opponents will claim that widening the I-5 is the
3 answer, but this is little more than a noisy distraction that
4 cannot be done without bulldozing hundreds of homes and
5 businesses, and costing the state billions of dollars, which
6 it does not have.

7 Make no mistake, widening the I-5 is a no project
8 alternative, and a no project alternative will condemn this
9 area to increasing traffic congestion, and decreasing access
10 to the coast.

11 Please allow for the completion of State Route 241
12 in order to provide coastal access and traffic relief for all
13 Californians.

14 Thank you.

15 **CHAIR KRUEER:** Thank you, Ma'am.

16 Senator Dick Ackerman.

17 **MR. ACKERMAN:** Mr. Chairman, members, my name is
18 Dick Ackerman, I am the senator from the 33rd District, which
19 has the majority of the 241 toll road in it. I am also
20 speaking on behalf of Senator Mark Wyland, who is the senator
21 from San Diego and Orange County, who has the rest of the
22 241.

23 The completion of this public highway will provide
24 improved coastal access for residents of state's inland
25 communities, as well as to serve the critical needs for

1 traffic relief and public safety for the growing population
2 in Orange and San Diego Counties.

3 Local, regional, state and federal agencies have
4 all worked on this project for more than 20 years. These
5 agencies have participated and collectively analyzed more
6 than 38 alternatives to determine the best alignment for the
7 completion of the 241. The chosen alignment is the least
8 environmentally damaging, and practicable alternative.

9 A few facts that have been put out that will
10 guarantee that we believe that they are not facts. SR 241
11 will not touch the beach. It doesn't come any closer to the
12 beach than the existing I-5, or the Old Highway 101.

13 The San Mateo campground will stay open and
14 enjoyable. The ultimate authority of the state parks issue
15 has confirmed that the completion of the 241 will not cause
16 closure of the San Mateo campground, or impact its viability.

17 Lastly, Trestles will not be harmed. Professional
18 hydrologic engineers have conclusively shown that at the
19 completion of the 241 will not cause the world famous
20 Trestles surf break to be diminished or altered.

21 The completion of this state highway serves a
22 greater state need. It will preserve and enhance the
23 recreational use of our treasured state beaches and local
24 parks, and ultimately improve coastal access for our inland
25 communities.

1 On a personal note, I was in San Diego a couple of
2 months ago on the second day of the fires, as you will
3 recall, we had 20 major fires in Southern California. I came
4 down to San Diego in the morning on Monday, and I tried to
5 get home that Monday afternoon, about mid-day, and I was
6 almost unable to get home. It took me about 3 hours from San
7 Diego to the Orange County boarder because a lot of people in
8 San Diego were being evacuated to Orange County.

9 If that 241 extension had been in place, we would
10 have been able to divert a lot of that traffic between the 5
11 and the 241, and if it had been a more severe situation, we
12 probably would have been able to save lives, and not created
13 the situation we have right now.

14 So, I urge your positive consideration, thank you.

15 **CHAIR KRUEER:** Thank you, Senator.

16 Assemblywoman Mimi Walters.

17 **MS. WALTERS:** Good afternoon, I am Assemblywoman
18 Mimi Walters, representing the 73rd Assembly District in the
19 State Legislature, covering northern San Diego County, and
20 southern Orange County.

21 I am here today to respectfully request your
22 approval of the federal consistency certification for the
23 completion of the 241 Foothill South, which runs through my
24 district. The completion of the 241 is critical to the
25 infra-structure of Southern California, by providing

1 desperately needed relief to the traffic congestion on our
2 local highways and even our local roads.

3 The City of San Clemente has gone on record saying
4 that if the 241 is not completed, their local transportation
5 plan will fail. In addition, the completion of the 241 will
6 provide much needed access to the coast for people traveling
7 from inland communities.

8 During certain high traffic periods, this road
9 will cut an entire hour off of what is now a 2-hour drive,
10 making it much easier for those who live inland to enjoy our
11 pristine coastline. Our beautiful coastline should not be
12 accessible only to those who live within a stone's throw.

13 The completion of the 241 will dramatically
14 enhance our community's quality of life by allowing people to
15 spend more time with their families, enjoying our state's
16 beautiful natural resources, and less time sitting in traffic
17 on Interstate 5, and the surface streets in my district that
18 have now become congested due to the back up flood of cars.
19 The completion of the 241 is desperately needed for my
20 district, and for all of Southern California.

21 For all of these reasons, thank you for your time,
22 and I respectfully ask for your approval of the federal
23 consistency certification of the completion of the 241.

24 Thank you.

25 **CHAIR KRUEER:** Thank you, very much.

1 Assemblyman Mike Duval.

2 UNIDENTIFIED SPEAKER: He had to fly back.

3 CHAIR KRUEER: He had to go? okay.

4 Jose Gomez, for Bill Lockyear.

5 MR. GOMEZ: Hello, my name is Jose Gomez, and I am
6 here on behalf of our State Treasurer Bill Lockyear.

7 Treasurer Bill Lockyear opposes the proposed Foothill South
8 toll road through San Onofre State Beach. He wanted very
9 much to be here today, but a death in the family prevented
10 him from joining you.

11 I am here on his behalf to express his strong
12 opposition to this toll road. He urges the California
13 Coastal Commission to reject to finding that the project is
14 consistent with the Federal Coastal Zone Management Act.

15 In Treasurer Bill Lockyear's own words:

16 "As Attorney General, I filed suit on March 23, 2006 to
17 block this toll road project. The lawsuit sought to uphold
18 California's important laws on environmental protection, and
19 preservation of sacred Native American sites. Filed on
20 behalf of the people of California, the action alleged the
21 transportation corridor's agency, in approving the project,
22 violated the *California Environmental Quality Act* and Public
23 Resources Code Section 5097.94.

24 The proposed toll road, according to the lawsuit,
25 would destroy unique environmental resources and sacred

1 religious and ceremonial sites, and San Onofre State Beach.

2 I strongly believed then that the TCA's approval
3 would, effectively, eliminate a state park from California's
4 world class system. I still believe that today. The project
5 should not be allowed to proceed.

6 The toll road would decimate a natural resource
7 that has been treasured by Californians for 37 years. San
8 Onofre State Beach offers the public access to a natural
9 environment that is unparalleled in northern San Diego
10 County. It also is home to the popular San Mateo Campground,
11 which provides low cost overnight access to the coast, a
12 great access to the area.

13 The park ranks as California's 6th most popular
14 state park, with more than 2.4 million visits per year. Yet,
15 despite San Onofre State Beach's popularity and prominence in
16 the state park system, the TCA proposes to pave a road
17 through its heart.

18 As detailed in the Coastal Commission's staff
19 report, the proposal violates essential Coastal Act policies.
20 TCA cannot, as it proposes, make the project consistent with
21 the Act by just writing a check to fund unspecified
22 mitigation measures.

23 Our state parks are an integral part of
24 California's identity, and helps to make our state golden.
25 The most conic images of California are our state parks,

1 giant Sequoia groves, ancient redwood forests, sprawling
2 coastlines and beaches, these parks express our commitment to
3 environmental protection, and to preserving our unmatched
4 natural resources, for future generations to enjoy.

5 San Onofre State Beach is one of those parks. As
6 such, it deserves the strongest protection. I urge the
7 Commission to provide that protection and reject the TCA's
8 application.

9 Thank you.

10 **CHAIR KRUEER:** Thank you, sir.

11 **MR. GOMEZ:** In addition, I also have a letter from
12 State Treasurer, Bill Lockyear, urging your --

13 **CHAIR KRUEER:** Okay, give that to staff, that would
14 be fine.

15 Assemblyman Martin Garrick.

16 **MR. GARRICK:** Good afternoon, my name is Martin
17 Garrick, and I represent the 74th District, representing 9
18 cities in northern San Diego County, also a lifetime surfer
19 at Trestles, Old Man, Rincon, and a multitude of other
20 locations up and down the coast. That adds up, today, to
21 over 39-plus years, I will say, of surfing. I have a strong
22 and very personal interest in making sure this road doesn't
23 harm or impact one of the state's surf treasures.

24 I, personally, toured the site and counted the 442
25 existing pileons, abutments, and trestles, and it didn't take

1 long to see that the proposed road, with 4 more pileons,
2 doesn't touch the beach, doesn't close off the campgrounds,
3 and will not harm the surf.

4 We know, from our regional planners, that the
5 completion of this highway will address the critical needs of
6 the traffic relief, public safety, and will provide improved
7 coastal access for the growing populations of Orange and San
8 Diego Counties.

9 As your state representative, I ask that you pay
10 particular attention to the issue of public safety. The fact
11 is that the public safety needs of our growing population
12 cannot solely be addressed by the widening of Interstate 5.

13 As in every other heavily populated area in the
14 state, citizens need multiple options in their road systems.
15 In the event of major traffic incidents, earth quake,
16 wildfires, and other disasters, an alternative to I-5 is
17 necessary, for emergency response vehicles, as well as the
18 continued movement of people and goods.

19 As recent history has shown, one of the biggest
20 threats to our local communities in Southern California is
21 posed by wildfires. In the future emergencies and disaster
22 the value of this road to public safety is immeasurable. We
23 know, from our fire fighters, and other safety professionals,
24 that the completion of SR 241 will provide our southern
25 Orange County and northern San Diego County with four

1 different items: an alternative evacuation route for I-5, a
2 fire break at the county line to keep major fires from
3 spreading, a staging area for the deployment of large numbers
4 of resources for fire fighters, and enhance response time for
5 first responders in all types of emergencies.

6 Ultimately, the people of Southern California need
7 this road. It will provide enormous benefits to the region,
8 and the state, and until the 241 is built the only way in and
9 out of the coastal San Diego, and to and from southern Orange
10 County is the I-5.

11 For this reason, I ask that you vote to approved
12 this federal consistency certification, and I want to thank
13 you for the opportunity to present this, and encourage every
14 Commissioner to visit the site.

15 Thank you.

16 **CHAIR KRUEER:** Thank you.

17 Deanna Spehn, policy director for State Senator
18 Christine Kehoe.

19 **MS. SPEHN:** I am policy director for Senator
20 Kehoe, she is in Sacramento, and regrets that she couldn't be
21 with you here today.

22 Since this designation as a state beach in 1971,
23 San Onofre has been one of California's most visited state
24 parks, with over 2 million visitors to the beach portion, and
25 over 160,000 visitors to the park's 2 campgrounds each year.

1 It is a rare 3,000 acre scenic coastal canyon park with high
2 environmental values, and recreational use by people of all
3 ages.

4 The proposed toll road would traverse the state
5 beach from top to bottom, forcing the closure of 60 percent
6 of what has become one of the state's most popular parks. It
7 would effect the park's largest campground, introduce visual
8 and acoustic blight, destroy habitat for 11 endangered and
9 threatened species, and degrade the world famous Trestles
10 Beach, known to surfers all over the world.

11 As stewards of the Coastal Zone Management Act,
12 Coastal Commission members protect park and habitat resources
13 along the coast. As a former member of the Coastal
14 Commission, and an senator for the 39th District that
15 includes the coastal area from the City of Del Mar, where you
16 are today, to the City of San Diego. The importance of
17 protecting and preserving our precious coastal zone is
18 emphasized to me on a daily basis by my constituents.

19 To me, it is quite evident, that the proposed
20 Foothill South Toll Road will negatively affect San Onofre
21 State Beach, to such an extent that the road should be found
22 to be inconsistent with the CZMA.

23 Despite plans by the TCA for a massive sound wall
24 through the park, the peace and quiet now enjoyed by over 2
25 million visitors each year will be lost forever. There is

1 simply no way to mitigate the harm. This is not just a toll
2 road to through a state park, it is a toll road instead of a
3 state park. Running a road through this park is part of a
4 dangerous trend in California, as we see major infrastructure
5 projects opting for crossing public lands as a preferred
6 alternative. Parks seems to have become the path of least
7 resistance.

8 I encourage you, as members of the Commission, to
9 find the project to be inconsistent, and request that the
10 Transportation Corridor Agencies look for feasible
11 alternatives that do not effect San Onofre State Park, or
12 other parkland and beaches.

13 Sincerely, Senator Christine Kehoe.

14 Thank you, very much.

15 **CHAIR KRUER:** Thank you very much.

16 Lesa Heebner, from the City of Solano Beach.

17 **MS. HEEBNER:** Chair Kruer, and Commissioners, I am
18 Lesa Heebner, and I am a councilmember from the City of
19 Solano Beach, speaking on behalf of our entire council.

20 Last year, when I served as mayor, our council
21 voted 5 to zero to oppose the toll road. This letter -- that
22 I have in my hand and will give to staff when I conclude my
23 remarks, documents that resolution, and I will enter it into
24 the record today.

25 "At issue here is not congestion versus

1 conservation, traffic versus trestles, what
2 is at stake is promises made versus promises
3 broken. Promises made by President Nixon
4 when urging the then Governor Ronald Reagan,
5 to set aside this park to offset damage from
6 previous development. Neither of these
7 individuals are known for being staunch
8 environmentalists, but they knew that a
9 balance must be struck between development
10 and nature. Are we going to be the stewards
11 of that promise, or will we break it for
12 the short term, and we believe, questionable
13 gain? As elected officials, our council
14 believes it is our obligation to be the
15 keeper of past promises, like this one,
16 to protect lands that were the other side
17 of a deal. To undermine this decision would
18 not only have enormous consequences to this
19 area, but would set up a potentially
20 catastrophic precedent in making state parks
21 mere place holders for future infra-structure
22 projects. Let it not be us that put our state
23 parks at risk to that kind of future.
24 Commissioners, we ask that you keep your record
25 of public confidence by keeping the past

1 promise to permanently protect these lands.
2 All five members of the Solano Beach City
3 Council urge you to uphold the staff
4 recommendation, and vote "No" on this toll
5 road."

6 Thank you.

7 **CHAIR KRUER:** Thank you, very much.

8 Assemblyman Jose Solorio, Mayor Lori Holt Pfiler,
9 Congressman Jeff Miller, Mayor Buddy Lewis, the City of
10 Carlsbad, Councilmember Jack Feller, of Oceanside, I saw Jack
11 here.

12 [No Response]

13 **MR. FELLER:** Good afternoon, Commissioners,
14 Chairman Kruer, Commission and staff, visitors from Orange,
15 Riverside, and as well San Diego County, today you are going
16 to be asked to believe two different sides of experts. Your
17 job is to decide fact or fiction.

18 What I am here to do is to address access. When a
19 family of 5 living in Corona, or Norco, wants to go to the
20 beach at, say, Oceanside, they have two roads to get there, 5
21 or 15. They must use, 91, 55, to 5, or 91, 15, to slaughter
22 alley 76, or they can use metrolink. The 241 adds access.

23 Now, say that the same family wants to camp at San
24 Onofre State Park adjacent to Highway 5, they would have,
25 almost a direct access without using any other roads, but the

1 241.

2 More access could allow the state parks system to
3 keep the San Onofre State Park campground opened year 'round,
4 instead of closing part of the year. I know that there are
5 surfers in Corona and Norco that want easier access to the
6 Trestles.

7 I am sure you will hear from many, many people
8 what a great tool the 241 would be for access if there were
9 an earthquake, or for fire equipment to fight raging fires
10 through these open back country, what a great fire break the
11 241 would be, or for the movement of goods.

12 To Oceanside, it is about economics and access to
13 the new and better Oceanside. We need open roads to get
14 people to and from our hotels, restaurants, beaches and
15 harbor. I am sure some of the other cities to the south of
16 us can use that inland visitor for economic benefit in their
17 communities.

18 The 241 is a much needed option for Highway 5, and
19 at no cost to the taxpayers until they choose to use it.
20 They will use it because it provides them options and access,
21 which I believe is one of the Coastal Commission's greatest
22 policies, or commandments, more access.

23 Thank you.

24 **CHAIR KRUEER:** Mr. Feller, could you just state
25 your name for the record, I'm sorry, sir, I didn't ask you.

1 **MR. FELLER:** I am Jack Feller, councilmember for
2 the City of Oceanside.

3 **CHAIR KRUEER:** Thank you, sir.

4 Toni Iseman, Laguna Beach City Council, then
5 Crystal Crawford, City of Del Mar's Deputy Mayor.

6 **MS. ISEMAN:** Good afternoon, I am here as a member
7 of the city council. I am also the last Orange County
8 Coastal Commissioner, and I am also representing two
9 residents of Orange County who can't be here today.

10 **CHAIR KRUEER:** Would you state your name for the
11 record, and I know you look familiar, but.

12 **MS. ISEMAN:** Hi, I am Toni Iseman, and Joan Irvine
13 Smith provided something for you, and I think it is in front
14 of you, it starts to look like this -- we wanted the
15 originals, but they are too valuable. So, we have this, we
16 have art that represents the land that is going to be
17 decimated by this road.

18 It has been a long time in Orange County where
19 things get done without an environmental oversight because
20 they are outside of the coastal area. This is a chance to
21 really make sure, for those of who try to do the right thing,
22 have the support that we need.

23 Mrs. Smith wrote a letter:

24 "No project deserves the special treatment
25 this toll road has gotten. The precedent

1 that would be set by the manipulation of
2 state laws for development would be devastating
3 to state parks."

4 Dick O'Neill is at home watching on his computer,
5 and I think you may remember Dick as the chair of the
6 Democratic Party, and one of the two founding families of
7 Orange County?

8 There is a Donna O'Neill Land Conservancy that
9 hasn't been talked about today, and some of the photos and
10 art that you have in front of you represents that land. It
11 is pristine. It is cultural. It is visual. It is about
12 water quality. It is about air quality. It is about ESHA.
13 It is about habitat. And, this road is tearing through that.

14 The last time I was there I saw a sight that I
15 don't know that I've ever seen in California, and that is on
16 the top of the hill there weren't just a couple of deer, but
17 there were two giant bucks with all of their antlers,
18 standing there so majestic. What are we going to do with
19 this land, if we say, "Yes"?

20 I am asking you to honor the work that staff has
21 done, and listen to the beautiful words of Peter Douglas, and
22 please don't just support staff. Do it in such a way that we
23 don't have to come back here with another one of these toll
24 road ideas that goes through state parks.

25 Thank you.

1 **CHAIR KRUER:** Thank you, Ms. Iseman.
2 Deputy Mayor Crystal Crawford.

3 **MS. CRAWFORD:** Good afternoon, Mr. Chairman and
4 Commissioners. I am Crystal Crawford. I am deputy mayor for
5 the City of Del Mar.

6 I was here this morning to share with you how
7 well, how happy the City of Del Mar is about the San Dieguito
8 Lagoon restoration, how it is proceeding, and to encourage
9 you to approve, as you did unanimously, another mitigation
10 project proposed by Southern California Edison. Our city
11 knows full well and first hand how it is far easier to
12 prevent environmental damage from occurring, rather than
13 trying to mitigate for it after it has already been done.

14 That lagoon restoration is such an example. It
15 took decades for that project to come to fruition, and all
16 the while the impacts that the project was intended to
17 mitigate, continued, and immeasurable resources were lost.

18 The project before you today has even, in my
19 humble opinion, far more serious impacts being presented to
20 you for your serious consideration. Our council became aware
21 of this project after the City of Oceanside in early 2006
22 took a position in support of state parks, and in opposition
23 to the project. So, in February of 2006, our council
24 unanimously sent a letter to Governor Schwarzenegger
25 expressing our serious concerns about the potential impacts

1 of the proposal.

2 I am here today to remind you of that information,
3 which is part of your record, and to ask that you exercise
4 sound judgment and demonstrate the leadership that is
5 necessary to stop a project that will, in no uncertain terms,
6 destroy precious and ever dwindling coastal habitat.

7 Something that we heard called earlier today,
8 earlier this afternoon, super ESHA. It will also eliminate
9 high quality recreational areas that are particularly
10 important to families of modest means. It is undisputed,
11 that this Orange County transportation project will have
12 major impacts in San Diego County, its resources, and its
13 families. Yet, it was approved a board with no
14 representation from San Diego County, and without serious
15 consultation with San Diego County.

16 I respectfully request that you honor -- as the
17 previous speaker said to you -- your staff's recommendation,
18 and that you reject the TCA's consistency determination.

19 Thank you, very much, for your time.

20 **CHAIR KRUEER:** Thank you, very much.

21 San Diego Councilmember Jim Madaffer, and then
22 Richard Gardner.

23 [No Response]

24 Councilmember Ann Kulchin.

25 Mr. Gardner?

1 MR. GARDNER: Yes, sir.

2 CHAIR KRUE: Thank you.

3 MR. GARDNER: Hi, Honorable Commissioners, I am
4 Richard Gardner from Capistrano Beach. I have been following
5 this project for quite some time.

6 I want to begin by saying that I am a transit
7 advocate, and I am in favor of better mobility for everybody.
8 I am opposed to the 241 toll road for many of the reasons
9 that you have already heard from your staff, and from the
10 speakers today.

11 I want to go one step further, and say that it
12 appears that there are two things that you have to look at,
13 and forgive me, I don't pretend to tell you your job, but to
14 say you have two major goals, one is to preserve and protect
15 our coastal resources, and the other is to provide better
16 access for the enjoyment of those resources. Those are the
17 two basic things.

18 For the first one, I think it is pretty obvious
19 from all of the speakers that just from one category, say,
20 esthetics, that we would be damaging the coastal resources
21 within the coastal zone. So, the other part of that is do no
22 harm -- that is just like part of the creed that doctors
23 take.

24 For the second item, provide the best public
25 access. Is the toll road the best public access? Well, I

1 guess if you have the financial wherewithal to be able to pay
2 the tolls to come, that maybe that would be okay, but what
3 about all of the other people who would say, "I can't afford
4 the high tolls of the toll road. I can't use the coastal
5 resource." Is that what we want to do here? I don't think
6 so. That is the other reason that this is a bad access.

7 Now, there could be other solutions, and I could
8 tell you that I have spent hundreds of hours examining this,
9 and I know all of the -- as a member of the South Orange
10 County Major Investment Study Group, I could outline the
11 number of trips per day on each one of the off ramps of the
12 I-5 and tell you that there is really no significant change
13 with and without the 241, if you include what is called the
14 Avery Extension.

15 And, I think that a win-win today would be the
16 denial of the 241 south, with the direction to the TCA and
17 the OCTA --

18 CHAIR KRUEER: Mr. Gardner, your time has elapsed.

19 MR. GARDNER: Thank you.

20 CHAIR KRUEER: Thank you, for testifying.

21 Councilmember Ann Kulchin, and then Councilwoman
22 Donna Fry, from San Diego.

23 MS. KULCHIN: Mr. Chairman, members of the
24 Commission, I will be brief. My name is Ann Kulchin. I am
25 Mayor pro-tem in the City of Carlsbad, and I am very proud of

1 28 years of public service.

2 Now, I have to put my glasses on.

3 Our mission in public service is to preserve the
4 quality of life, contribute to our economy, and protect our
5 natural resources. Our regional transportation system needs
6 help. There is gridlock on I-5, as we all know, and that I-5
7 is the only route between San Diego and Orange Counties.
8 Solution is the extension of State Highway 241, the final
9 link to Orange County.

10 We have studied the alignments, the plans, the
11 well conceived design, with sensitivity to the environment,
12 to the neighborhood, to the communities, and to the
13 coastline. Opponents want to widen I-5. Cost to Carlsbad is
14 \$2.4 billion, plus the displacement of homes and businesses.
15 There is no federal or state funds available.

16 Rigorous standards followed by the U.S. Fish and
17 Wildlife, the EPA, the United States Marine Corps, the Corps
18 of Engineers, the Federal Highway Association, CalTrans,
19 working together for 6 years, 6 years, to maintain, or to
20 develop this very sensitive road.

21 The 241 is designed to protect our beaches. It is
22 going to protect our beaches. It is going to protect the
23 camp sites. It is going to protect the watersheds, and even
24 the surf.

25 As residents, commuters, elected officials with

1 responsibility to our communities, I urge you, the Coastal
2 Commission to support and approve this much needed trans-
3 portation artery.

4 Thank you, for your time.

5 **CHAIR KRUEER:** Thank you, Ms. Kulchin.

6 Donna Fry.

7 **MS. FRYE:** Good afternoon, Commissioners, and
8 thank you. My name is Councilmember Donna Frye. I am with
9 the City of San Diego in Council District 6.

10 I have been here all day, and one of the things
11 that I do know about is sitting and listening to testimony,
12 and I think there is an old saying, that says that the mind
13 can absorb only as much as the seat can endure, and you know,
14 I understand that, so -- or the feet may endure, depending of
15 you are seated or standing.

16 So, in any case, I wanted to tell you -- and this
17 has been submitted to the Commissioners, a resolution to
18 protect the California State Park lands. It was adopted by
19 the City of San Diego City Council, on behalf of the
20 citizenry in support of the state parks, November 18, 2005,
21 the California State Parks and Recreation Commission in a
22 resolution entitled "Opposing the proposed toll road
23 alignment and request for action to protect San Onofre State
24 Beach" and further the city council adopted that we support
25 additional examination and implementation of feasible

1 alternative projects, including improvements to Highway 5
2 that do not impact San Onofre State Beach, or other parklands
3 or beaches.

4 Speaking to you as a decision maker, one of things
5 that when we find ourselves in a very difficult situation,
6 and we have so much opposition, and so much support for an
7 item the question I always ask myself is, is it in the best
8 interest of the public, and, to consider the consequences of
9 my actions, today.

10 The decision that you make is something that will
11 be with us forever. It is something that will be affecting
12 one of most natural, most valuable natural resources, and I
13 ask that you consider which legacy your decision will leave.

14 And, the first legacy would be one of leaving to
15 not just our generation, but to all future generations a
16 beautiful natural pristine park, and beach. Or, if you want
17 to leave a legacy of concrete and adding insult to injury,
18 concrete that our future generations are going to have to pay
19 for the dubious privilege of driving over.

20 And, also, just as a final note, speaking not only
21 as a city councilmember, but also as the wife a wonderful
22 husband by the name of Skip Frye, who is celebrating 50 years
23 of surfing, I ask for him, and for all of the members of the
24 surfing community, please do the right thing, and protect and
25 preserve our public parks.

1 And, thank you very much for your time.

2 **CHAIR KRUEER:** Thank you, Councilmember Donna Frye.

3 Okay, Councilmember Jerry Kern, City of Oceanside,
4 and then Bill Campbell, County of Orange.

5 [No Response]

6 Mr. Kern is not here, so Mr. Campbell, you are up,
7 from the County of Orange.

8 **MR. CAMPBELL:** Good afternoon, Mr. Chairman,
9 Commissioners, I am Orange County Supervisor Bill Campbell. I
10 represent the northeastern portion of the county.

11 I am here today in support of the Foothill South,
12 because it will provide greater coastal access for residents
13 of Orange, Riverside and San Bernardino Counties, and because
14 it addresses the transportation challenges facing south
15 county, in an environmentally sensitive, and fiscally
16 responsible way.

17 The project has been the subject of regional
18 planning efforts for more than a quarter century. It has
19 been listed on the Orange County master plan of arterial
20 highways since 1981. It has been included in both SCAG and
21 SANDAGs regional transportation plans. The current Orange
22 County Transportation Authority long term plan, assumes that
23 the SR 241 will be completed.

24 The Transportation Corridor Agencies have been
25 actively engaged in the environmental review process of this

1 transportation challenge for more than 20 years. They have
2 worked openly and collaboratively, to analyzed dozens of
3 alignments and alternatives. Since 1996, TCA has worked with
4 the U.S. Fish and Wildlife Service, Environmentally
5 Protection Agency, U.S. Corps of Engineers, Federal Highway
6 Administration, CalTrans, and Camp Pendleton, as part of a
7 comprehensive federal environmental review process of project
8 alternatives.

9 The alignment before you was chosen by all of
10 these entities because it accommodates the needs of the
11 traveling public with the least environmental impact.

12 While the route selected is the most environ-
13 mentally sensitive, it is clear that the alignment goes
14 through a state park. I know that some fear that this could
15 initiate plans for roads through other state parks, but this
16 park is unique, and the selection is not precedent setting
17 for 3 reasons.

18 First, San Onofre State Park is on land leased
19 from the Department of the Navy. It is a 50-year lease which
20 expires in 2021, was granted on the condition that the Navy
21 retain the right to grant easements and rights-of-way over
22 the leased property.

23 Second, there is no state law prohibiting the
24 placement of this road through San Onofre State Beach Park.

25 And, third, the Department of Parks and Recreation

1 has known about a planned for a road going through San Onofre
2 State Beach Park for over 20 years, as evidenced by their
3 inclusion of a road in their revised general plan, issued
4 June 1984.

5 I ask that you keep these comments in mind, as you
6 discuss the matter before you, and that you affirm the CTAs
7 coastal consistency finding.

8 **CHAIR KRUER:** Thank you, sir.

9 Supervisor Pat Bates, County of Orange, and Wayne
10 Eggleston, City Council, San Clemente.

11 **MS. BATES:** Good afternoon, Mr. Chairman,
12 honorable members of the Commission. My name is Patricia
13 Bates. I have served as mayor of Laguna Niguel, as well as
14 the state assemblymember for Orange and north San Diego
15 Counties. Currently, I am a member of the Orange County
16 Board of Supervisors, representing south Orange County.

17 We will benefit greatly with the completion of the
18 Foothill South, or otherwise we will live at ground zero in a
19 nightmare of choking traffic.

20 You have heard how carefully we have planned this
21 critically needed road, and your decision will weigh what we
22 have done by applying the law, and the facts, to balance
23 converging interests.

24 Based on my own legislative involvement, with the
25 Commission's use of the balancing provisions, I believe it

1 could not be more clear that the less than 1/5th of an acre
2 of wetlands crossed by the 241 meets every element of the
3 Commission's historic standard of balancing. I base this on
4 commitments and assurances made to me, personally, when I sat
5 in the assembly.

6 In 1999, Assemblymember Denise Duchaney, Tom
7 Calderon and I co-authored legislation to add a 9th allowable
8 use in a wetland to permit new transportation facilities that
9 further public access to, or along the coast, based on
10 current or future needs. That provision, to deal with the
11 Bolsa Chica decision, contemplated a use precisely like the
12 one considered today.

13 During a public meeting on November 18, 1999, Mr.
14 Douglas accompanied by his Chief Counsel, Ralph Faust,
15 objected to our amendment as unnecessary. He said, and I
16 quote:

17 "The Commission still has the discretion to
18 look at these specific cases on a case-by-case
19 basis."

20 We have not yet found a single case that we haven't been able
21 to deal with and address because of the Bolsa Chica decision.
22 And, Coastal staff wrote to us to say the Coastal Commission
23 currently has the discretion and the tools to approve
24 development in the coastal zone, using the existing balancing
25 provisions. Well, we relied on these assurances, deleted the

1 language and left in place the traditional balancing
2 provision, and that is exactly what we are asking for today,
3 in what the Commission did when it approved State Route 56.

4 The 241 directly meets your balancing standards by
5 providing important new water quality benefits, dramatic new
6 coastal access by alleviating traffic on Interstate 5, and
7 enhancing visitor services through a \$100 million State Parks
8 restoration and enhancement package.

9 If these balancing provisions are not applied, I
10 would view the failure to honor those assurances as a breach
11 of trust with state legislators. As an elected official, I
12 am always asked "Why can't government solve problems?" With
13 the 241, we are solving a problem with both taxpayer dollars
14 --

15 CHAIR KRUE: Supervisor, your time is up.

16 MS. BATES: Thank you --

17 CHAIR KRUE: Appreciate it.

18 MS. BATES: -- for allowing me to speak to you
19 today.

20 CHAIR KRUE: Wayne Eggleston, City Council, San
21 Clemente, and then Maggie Houlihan, Encinitas City Council.

22 MR. EGGLESTON: My name is Wayne Eggleston. I am
23 a city councilman, and former mayor of San Clemente. For the
24 record, I am speaking for myself as a councilmember, and not
25 for the city council, although I am speaking for many San

1 Clemente residents, who are here today, who oppose the 241.

2 As a San Clemente City Councilmember, I know how
3 difficult it is to make decisions on issues that have
4 passions on both sides, and I really appreciate your
5 thoughtful deliberations today, and I don't know how you can
6 be so attentive after all of these hours, thank you, so much.

7 The majority of San Clemente City Council recently
8 voted to allow development on open space, and just in
9 yesterday's election, 70 percent of the citizens who voted,
10 voted not to allow development on open space in San Clemente.

11 It is a challenge for me to appear before you
12 today, as I am one of the few elected officials in Orange
13 County that has reservations about the 241. It is a
14 challenge, because I have many TCA elected and chamber
15 members, and wonderful friends, who are supportive of the
16 241. I respect their views, although I differ with them on
17 the necessity of the 241, and the impact to our coastal
18 resources.

19 If I sincerely thought that the 241 would
20 alleviate traffic on the I-5, I would be more supportive;
21 however, the 241 will only increase traffic in south Orange
22 County, and have tremendous impacts upon our coastal
23 resources.

24 Today, you are faced with a choice, a choice for
25 our vision, a choice for your legacy as individuals. As

1 Coastal Commissioners, your choice should be apart from any
2 political considerations, local or from Sacramento. Your
3 choice should be from your heart, and what is right for our
4 coastal resources.

5 I am going to focus on a couple of alternatives.
6 I will ask that you consider alternatives to the 241 which
7 have far less impact upon our coastal resources, and the
8 traffic will still be on the 5, whether the 241 is built, as
9 the 5 is the main arterial route from Los Angeles to San
10 Diego, and when the outlet mall is built in San Clemente,
11 traffic will be far, far worse. That is why we need
12 improvements to the 5 without condemnations, which can be
13 done with thoughtful and intelligent planning.

14 Traffic to the outlet mall will be coming south on
15 the I-5, according to the developer, and not along the 241.
16 San Clemente has sufficient public right-of-way land along
17 the majority -- the majority and not all -- the majority of
18 either side of the 5 to accommodate widening, without the
19 taking of private property.

20 Another alternative might be the widening and
21 improvements to Cristianitos, connecting it to La Pata. As
22 you may know, La Pata is planned to be connected to Antonio
23 Parkway and the Ortega Highway, making this a truly regional
24 road, such as Mulson Parkway, or Alicia Parkway.

25 Your decision today is not just another ordinary

1 coastal resource decision. It is a landmark decision. I ask
2 you to have the foresight, the vision, without political
3 pressure to make that decision today, that will leave your
4 legacy to your children, your grandchildren, and your great
5 grandchildren.

6 Please make the right decision today. Thank you,
7 so very much.

8 CHAIR KRUEER: Thank you.

9 MS. HOULIHAN: Chairman Krueer, and Commissioners,
10 this decision today --

11 CHAIR KRUEER: Could you speak your name, for the
12 record?

13 MS. HOULIHAN: Oh, I am sorry, Maggie Houlihan,
14 Deputy Mayor of the City of Encinitas.

15 CHAIR KRUEER: Thank you.

16 MS. HOULIHAN: This decision today is about the
17 facts, the science, and the will of the people.

18 In 1972, through the initiative process,
19 Californians passed the Coastal Act, from which came the
20 California Coastal Commission. They did this to protect the
21 beauty and natural splendor of the California coastline, and
22 to keep those assets in public ownership to continue to
23 provide access.

24 In 2003, the Public Policy Institute polled the
25 California residents and found overwhelmingly, north, south,

1 east, west, that Californians favored more, not less, coastal
2 protection.

3 On my way here today, I heard a radio commentator
4 discussing this hearing today, as a battle between the
5 environmentalists, and the business interests. Actually,
6 that is not true. This is a battle between the public
7 interest in California, and special interests. All aspects
8 of the public interest are served by this beautiful asset.
9 We have jobs. We have sales tax. We have cultural
10 resources, historical resources, and natural beauty that are
11 preserved.

12 Running a freeway through this state park is part
13 of a dangerous trend in California, as we see major infra-
14 structure projects opting for public lands as the preferred
15 alternative. Parks seem to have become the path of least
16 resistance, but I must say that with the amount of people
17 here today, opposing this project, I think the public is
18 challenging that perception.

19 Our parks, simply by the nature of their open
20 space, and accessibility, are becoming the preferred corridor
21 for infrastructure siting. We are at a crossroads today.
22 Who are we going to be as a state? what are we going to be
23 for the future?

24 State parks are needed now more than ever, as our
25 population increases. To sacrifice the San Onofre State

1 Beach for a highway is misguided, and would represent a
2 failure of the state's obligations to all Californians.

3 This is not just a toll road through a state park.
4 It is a toll road, instead of a state park.

5 Our precious public assets should not be for sale,
6 or trade, and thank you all for your consideration and the
7 time you are spending on this important issue.

8 **CHAIR KRUEER:** Thank you.

9 Mike Nichols, City of Solano Beach, and then Chris
10 Norby, Orange County Transportation Authority.

11 **MR. NICHOLS:** Good afternoon, Mike Nichols, City
12 of Solano Beach City Council.

13 I am here today to oppose this project, and with
14 my background, I would just like to share with you that I
15 have undergraduate degrees in both parks and recreation, and
16 landscape architecture. I am a licensed architect in the
17 State of California, and have a masters degree in city
18 planning.

19 And, in my career, I have had the opportunity to
20 work on both public infrastructure, and public transportation
21 projects, and with that experience, I do wish to encourage
22 you to deny this project. Whether it be for the greater
23 issues, the water quality issues, the biological wildlife
24 issues that you have heard of, the recreational issues, or
25 even the moving testimony that you have heard, based on the

1 sacred nature of this site, I urge you to deny this project.

2 We all know that these environmentally sensitive
3 lands were set aside for preservation, and so that future
4 generations could enjoy what is an unspoiled southern coast
5 of California, which is, in itself, an endangered species.

6 As elected officials, how can we expect the public
7 to trust us with the decisions that we make, and the promises
8 that we pledge, if we retract the decisions and we take these
9 lands out of preservation?

10 Approving this project would not only erode the
11 soils of the pristine canyons and natural areas in this
12 preserve, but it would also erode the public's trust in the
13 government, and our duty to protect these precious coastal
14 resources.

15 I urge you to do the right thing, and follow the
16 Coastal Act directives, that simply do not allow highway uses
17 within environmentally sensitive habitat areas.

18 Thank you for your consideration, and your vote to
19 deny this project.

20 **CHAIR KRUEER:** Thank you.

21 **MR. NORBY:** Mr. Chairman, my name is Chris Norby.
22 I am a member of the Orange County Board of Supervisors, and
23 chairman of the Orange County Transportation Authority.

24 And, I am sure there is one thing we can all agree
25 to here today is that it has been a beautiful day here today

1 in Del Mar, and even though we may disagree upon this
2 proposed project. My authority that I represent, strongly
3 supports the completion of the Foothill extension, and
4 believes that it is a part of the comprehensive plan to
5 relieve traffic congestion in Southern California.

6 There, obviously, are those here who disagree, but
7 what are the alternatives?, Fix the 5 we have been told, 800
8 homes, 800 businesses, 800 takings, according to our studies,
9 will be affected by that. The fixing of the 5 isn't going to
10 happen, because there is no money for it. There is no gas
11 tax money for it. Widening the 5 freeway through San Juan
12 Capistrano, through San Clemente, isn't going to happen,
13 because the state doesn't have any money. It is not in any
14 state plan. It is not in any local plan, and it is not going
15 to occur.

16 So, therefore, the only alternative is no build,
17 do nothing. And, if we do nothing, traffic will only get
18 worse, and we will be subject to traffic jams from Oceanside
19 all the way up to Irvine.

20 This 17-mile extension will not affect the surf at
21 Trestles. No credible study has shown that it will. It will
22 not encourage any additional growth of population. The homes
23 in Orange County, the maximum number have already been
24 approved. They are going to be built whether this is
25 completed or not, and there will be no homes here in the Camp

1 Pendleton Marine Base.

2 The 17-mile extension will not stretch these
3 resources. The financing is already in place through future
4 tolls and developer fees. What it will do is ease
5 congestion, save countless gallons of fuel, cut down in
6 pollution, cut countless people-hours waiting in congested
7 traffic, and it will provide needed access to the beach, from
8 those millions of people in the Inland Empire, who will have
9 access, now, to the beach which belongs not just to those who
10 live along side of it, but to those that live in inland
11 Southern California who need access to it.

12 None of us here wants to destroy the coastline.
13 All of us here want to respect the beauty of the California
14 coastline and protect it, but we believe it can be protected
15 while providing access and needed traffic relief with the
16 extension of the 241 South, and we urge its approval.

17 Thank you.

18 **CHAIR KRUEER:** Thank you.

19 And, before I call on the next speakers, would the
20 people with the posters please move to the back, you are
21 competing with each other, and there are lot of people in the
22 audience who want to see what is going on, and we can't see
23 what is going on back there. And, please let the people come
24 up and speak in peace, okay?

25 Councilmember Lance MacLean, City of Mission

1 Viejo.

2 **MR. MAC LEAN:** Honorable Commissioners, I am Lance
3 MacLean, councilmember for the City of --

4 **CHAIR KRUEER:** Can you please speak into the
5 microphone, sir?

6 **MR. MAC LEAN:** Honorable Commissioners, I am Lance
7 MacLean, councilmember for the City of Mission Viejo, and I
8 want to indicate my support for the completion of Foothill
9 South 241 as the only alternative that brings transportation
10 balance to our community.

11 Not completing the Foothill South, essentially,
12 guarantees that the traffic impacts on Mission Viejo would
13 not only continue, and virtually assured to get significantly
14 worse, and destroy my community.

15 The City of Mission Viejo is geographic gateway to
16 Interstate 5 for the communities of Rancho Santa Marguerita,
17 Madera Ranch, and Las Flores, which are developments to our
18 east.

19 To handle the volume of traffic, the City of
20 Mission Viejo has had to widen and improve its local arterial
21 roads. Today, Alicia Parkway has 7 lanes, La Paz will be
22 expanded from 4 to 6 lanes, Oso will be expanded from 6 to 8
23 lanes, and Crown Valley has 8 lanes. Current traffic totals
24 for all 5 arterial streets approaching the I-5 interchanges,
25 is in excess of 265,000 vehicles per day, burdening our

1 city's local streets with virtual freeway volume traffic.

2 What is discouraging is that this traffic volume
3 is what we experience every day, and the current road
4 capacities are necessary just to handle existing traffic
5 conditions, and do not address the known population growth.

6 The demand to utilize the freeway system is
7 expected to increase significantly, as average daily work
8 trips, non-work trips, and regional trips, are all
9 anticipated to grow, by a minimum of 40 percent by 2030.

10 For Mission Viejo, this is particularly
11 significant, as the already permitted Rancho Mission Viejo
12 development, to our southeast, will add 14,000 homes, and
13 millions of square feet of commercial and retail space. This
14 growth will further stretch the capacities of Mission Viejo's
15 arterial roads as drivers continue to use them for access to
16 Interstate 5, or as alternative routes to congested freeways.

17 Trips from San Diego County to south Orange County
18 are forecasted to increase 57 percent during this time
19 period. Already, over 1.4 million truck travel from Mexico,
20 using I-5, to reach destinations to the north, and weekend
21 recreational traffic volumes on Interstate 5 between San
22 Diego and Orange County routinely exceed the week day traffic
23 near the San Diego County line. This increased traffic will
24 result in longer peak period freeway commute times in south
25 Orange County.

1 Most of Interstate 5, within the south county area
2 currently operates at a failing level of service during the
3 peak hours, while virtually all of Interstate 405 operates at
4 a failing level of service. Key arterial segments, adjacent
5 or parallel to Interstate 5, carrying traffic, approaches or
6 exceeds their capacities.

7 Investments need to be made now, to develop our
8 transportation infrastructure, in order to reduce travel time
9 and increase through-out, thereby improving our quality of
10 life, expanding our economy, and serving the increased
11 recreational demands.

12 The completion of 241 Foothill South is a critical
13 part of a well balanced, planned, solution that will provide
14 significant traffic congestion relief to save Mission Viejo
15 and south county from gridlock.

16 State Route 241 is a critical link in Southern
17 California regional transportation plan, that will relieve
18 traffic congestion, improve air quality, clean water runoff,
19 and restore native habitat. Simply put, the City of Mission
20 Viejo's quality of life relies on the completion of the 241
21 toll road.

22 I respectfully request the Coastal Commission
23 approve the coastal consistency certification for State Route
24 241.

25 Thank you for your time.